THE GENOCIDE CONVENTION

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

EIGHTY-FIRST CONGRESS

SECOND SESSION

ON

Executive O

THE INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

JANUARY 23, 24, 25, AND FEBRUARY 9, 1950

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CONTENTS

THE GENOCIDE CONVENTION

MONDAY, JANUARY 23, 1950

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
SUBCOMMITTEE ON THE GENOCIDE CONVENTION,
Washington, D. C.

The subcommittee met, pursuant to notice, at 10 a. m., in room 318, Senate Office Building, Senator Brien McMahon (chairman of the subcommittee) presiding.

Present: Senators McMahon (chairman of the subcommittee), Thomas of Utah, Pepper, Hickenlooper, and Lodge.

Senator MCMAHON. Ladies and gentlemen, the hearing will come to order.

PURPOSE OF THE HEARINGS

We are here as a subcommittee of the Foreign Relations Committee of the Senate for the purpose of considering a message from the President of the United States in which he transmitted to the Senate a Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted unanimously by the General Assembly of the United Nations in Paris on December 9, 1948, and signed on behalf of the United States on December 11 of the same year.

We are informed that the convention was signed only after very extensive negotiations conducted under the auspices of the United Nations, that lasted for some 2 years, and I do not need to describe for the record the incidents and the acts of horror which brought men together for the purpose of defining this situation as an international crime, because those horrible events are only too vivid in our memories.

The committee was disappointed when we learned that the Secretary of State could not appear. We know that he wanted to, but he has another commitment, a previous commitment, which made this impossible. I have been assured, however, that if at the end of this hearing there are questions that remain unanswered, or the full committee desires to hear the Secretary of State, he will be glad to appear.

SUGGESTED METHOD OF PROCEDURE

So many have asked the committee to be heard that the committee urges witnesses to make their oral testimony as short as possible, and to leave with us in written form all the information they wish. All testimony, both oral and written, will be printed for the use of the committee and the Senate on this matter.

Our disappointment at the inability of the Secretary of State to appear is very much mitigated by the fact that we have with us a distinguished member of the staff of the State Department, Mr. Dean

Rusk, who is Deputy Under Secretary of State, and we also have with us Mr. Philip B. Perlman, Solicitor General of the United States, who will testify for the Department of Justice on this matter. Mr. Perlman's deep interest in this whole subject is known to all of us, and I am sure that these two witnesses will be helpful in interpreting the convention. They will be followed, I believe, by Judge Robert Patterson, an old friend of ours, a former very distinguished Secretary of War, who will speak for the United States Committee for a United Nations Genocide Convention.

Will you come right up here, Dean Rusk, and take this seat so we can get going?

Before you start perhaps I should submit for the record the message of the President.

(The message referred to is as follows:)

[Executive O, 81st Cong., 1st sess.]

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING A CERTIFIED COPY OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE, ADOPTED UNANIMOUSLY BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS IN PARIS ON DECEMBER 9, 1948, AND SIGNED ON BEHALF OF THE UNITED STATES ON DECEMBER 11, 1948

THE WHITE HOUSE, *June 16, 1949.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a certified copy of the convention on the prevention and punishment of the crime of genocide, adopted unanimously by the General Assembly of the United Nations in Paris on December 9, 1948, and signed on behalf of the United States on December 11, 1948.

The character of the convention is explained in the enclosed report of the Acting Secretary of State. I endorse the recommendations of the Acting Secretary of State in his report and urge that the Senate advise and consent to my ratification of this convention.

In my letter of February 5, 1947, transmitting to the Congress my first annual report on the activities of the United Nations and the participation of the United States therein, I pointed out that one of the important achievements of the General Assembly's first session was the agreement of the members of the United Nations that genocide constitutes a crime under international law. I also emphasized that America has long been a symbol of freedom and democratic progress to peoples less favored than we have been and that we must maintain their belief in us by our policies and our acts.

By the leading part the United States has taken in the United Nations in producing an effective international legal instrument outlawing the world-shocking crime of genocide, we have established before the world our firm and clear policy toward that crime. By giving its advice and consent to my ratification of this convention, which I urge, the Senate of the United States will demonstrate that the United States is prepared to take effective action on its part to contribute to the establishment of principles of law and justice.

HARRY S. TRUMAN.

(Enclosures: (1) Report of the Acting Secretary of State, (2) certified copy of convention on the prevention and punishment of genocide.)

DEPARTMENT OF STATE,
Washington, D. C.

The PRESIDENT,
The White House:

I have the honor to transmit to you a certified copy of the convention on the prevention and punishment of the crime of genocide, adopted unanimously by the General Assembly of the United Nations in Paris on December 9, 1948, with the recommendation that it be submitted to the Senate for its advice and consent to ratification.

The convention defines genocide to mean certain acts, enumerated in article II, committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such. These acts are discussed below.

The basic purpose of the convention is the prevention of the destruction of a human group as such. The first resolution of the General Assembly on this subject, 96 (I), adopted unanimously by the members of the United Nations on December 11, 1946, succinctly pointed out that—

"Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings."

The resolution also pointed out that genocide shocks the conscience of mankind, results in great losses to humanity and is contrary to moral law. Of course, homicide also is shocking, results in losses to humanity and is contrary to moral law. The distinction between those two crimes, therefore, is not a difference in underlying moral principles, because in the case of both crimes, moral principles are equally outraged. The distinction is that in homicide, the individual is the victim; in genocide, it is the group.

The General Assembly declared in this resolution that the physical extermination of human groups, as such, is of such grave and legitimate international concern that civilized society is justified in branding genocide as a crime under international law. The extermination of entire human groups impairs the self-preservation of civilization itself. The recent genocidal acts committed by the Nazi Government have placed heavy burdens and responsibilities on other countries, including our own. The millions of dollars spent by the United States alone on refugees, many of them the victims of genocide, and the special immigration laws designed to take care of such unfortunates illustrate how genocide can deeply affect other states. On September 23, 1948, Secretary of State Marshall stated that—

"Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field."

It it not surprising, therefor, to find the General Assembly of the United Nations unanimously declaring that genocide is a matter of international concern.

Thus, the heart of the convention is its recognition of the principle that the prevention and punishment of genocide requires international cooperation. However, the convention does not substitute international responsibility for state responsibility. It leaves to states themselves the basic obligation to protect entire human groups in their right to live. On the other hand it is designed to insure international liability where state responsibility has not been properly discharged.

The convention was carefully drafted and, indeed, represents the culmination of more than 2 years of thoughtful consideration and treatment in the United Nations, as the following important steps in its formulation demonstrate:

The initial impetus came on November 2, 1946, when the delegations of Cuba, India, and Panama requested the Secretary-General of the United Nations to include in the agenda of the General Assembly an additional item: the prevention and punishment of the crime of genocide. The Assembly referred the item to its Sixth (Legal) Committee for study.

At its fifty-fifth plenary meeting on Decemebr 11, 1946, the Assembly adopted, without debate and unanimously, a draft resolution submitted by its Legal Committee. This resolution, referred to above, affirmed that "genocide is a crime under international law." It recommended international cooperation with a view to facilitating the prevention and punishment of genocide, and, to this end, it requested the Economic and Social Council of the United Nations to undertake the necessary studies to draw up a draft convention on the crime.

Pursuant to this resolution a draft convention on genocide was prepared by the ad hoc Committee on Genocide in the spring of 1948, under the chairmanship of the United States representative on this committee. The draft was again discussed by the Economic and Social Council in July and August 1948 in Geneva, and then in the Legal Committee of the General Assembly at its third regular session in Paris, where again the United States delegation played an important role in the formulation of the draft convention.

On December 9, 1948, the General Assembly unanimously adopted the convention to outlaw genocide, which was signed by the United States 2 days later. When signing, the United States representative said, in part:

"I am privileged to sign this convention on behalf of my Government, which has been proud to take an active part in the effort of the United Nations to bring this convention into being.

"The Government of the United States considers this an event of great importance in the development of international law and of cooperation among states for the purpose of eliminating practices offensive to all civilized mankind."

Genocide is a crime which has been perpetrated by man against man throughout history. Although man has always expressed his horror of this heinous crime, little or no action had been taken to prevent and punish it. The years immediately preceding World War II witnessed the most diabolically planned and executed series of genocidal acts ever before committed. This time there was to be more than mere condemnation. A feeling of general repulsion swept over the world, and following the war manifested itself in the General Assembly's resolution of December 1946. It is this resolution to which the Legal Committee gave full content by providing the General Assembly with a legal instrument designed not only to prevent genocidal acts but also to punish the guilty.

The genocide convention contains 19 articles. Of these, the first 9 are of a substantive character, and the remaining 10 are procedural in nature.

The preamble is of a general and historical nature.

Article I carries into the convention the concept, unanimously affirmed by the General Assembly in its 1946 resolution, that genocide is a crime under international law. In this article the parties undertake to prevent and to punish the crime.

Article II specifies that any of the following five acts, if accompanied by the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, constitutes the crime of genocide:

(*a*) Killing members of the group;
(*b*) Causing serious bodily or mental harm to members of the group;
(*c*) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(*d*) Imposing measures intended to prevent births within the group; and
(*e*) Forcibly transferring children of the group to another group.

This article, then, requires that there should be a specific intent to destroy a racial, religious, national, or ethnical group as such in whole or in part. With respect to this article the United States representative on the Legal Committee said:

"I am not aware that anyone contends that the crime of genocide and the crime of homicide are one and the same thing. If an individual is murdered by another individual, or indeed by a government official of a state, a crime of homicide has been committed and a civilized community will punish it as such. Such an act of homicide would not in itself be an international crime. To repeat the opening language of the resolution of the General Assembly of December 1946, "genocide is a denial of the right of existence of entire human groups." This remains the principle on which we are proceeding.

"However, if an individual is murdered by another individual, or by a group, whether composed of private citizens or government officials, as part of a plan or with the intent to destroy one of the groups enumerated in article 2, the international legal crime of genocide is committed as well as the municipal-law crime of homicide."

The destruction of a group may be caused not only by killing. Bodily mutilation or disintegration of the mind caused by the imposition of stupefying drugs may destroy a group. So may sterilization of a group, as may the dispersal of its children.

Article III of the convention specifies that five acts involving genocide shall be punishable. These five genocidal acts are—

(*a*) The crime of genocide itself;
(*b*) Conspiracy to commit genocide:
(*c*) Direct and public incitement to commit genocide;
(*d*) Attempt to commit genocide; and
(*e*) Complicity in genocide.

The parties agree, in article IV, to punish guilty persons, irrespective of their status.

In article V the parties undertake to enact, "in accordance with their respective constitutions," the legislation necessary to implement the provisions of the convention. The convention does not purport to require any party to enact such legislation otherwise than in accordance with the country's constitutional provisions.

Article VI makes it clear that any person charged with the commission of any of the five genocidal acts enumerated in article III shall be tried by a court of the state in whose territory the act was committed, or by such inter-

national penal tribunal as may have jurisdiction with respect to those states accepting such jurisdiction. Thus, the commission in American territory of genocidal acts would be tried only in American courts. No international tribunal is authorized to try anyone for the crime of genocide. Should such a tribunal be established, Senate advice and consent to United States ratification of any agreement establishing it would be necessary before such an agreement would be binding on the United States.

By article VII the parties agree to extradite, in accordance with their laws and treaties, persons accused of committing genocidal acts; none of such acts is to be considered a political crime for the purpose of extradition. The United States representative on the Legal Committee, in voting in favor of the convention on December 2, 1948, said:

"With respect to article VII regarding extradition, I desire to state that until the Congress of the United States shall have enacted the necessary legislation to implement the convention, it will not be possible for the Government of the United States to surrender a person accused of a crime not already extraditable under existing laws."

Existing United States law provides for extradition only when there is a treaty therefor in force between the United States and the demanding government. Only after Congress has defined, and provided for the punishment of, the crime of genocide, and authorized surrender therefor, will it be possible to give effect to the provisions of article VII.

Article VIII recognizes the right of any party to call upon the organs of the United Nations for such action as may be appropriate under the Charter for the prevention and suppression of any of the acts enumerated in article III. This article merely affirms the right of the United Nations to call upon an organ of the United Nations in matters within its jurisdiction.

Article IX provides that disputes between the parties relating to the interpretation, application, or fulfillment of the convention, including disputes relating to the responsibility of a state for any of the acts enumerated in article III, shall be submitted to the International Court of Justice, when any party to a dispute so requests.

On December 2, 1948, in voting in favor of the genocide convention, the representative of the United States made the following statement before the Legal Committee of the General Assembly:

"I wish that the following remarks be included in the record verbatim:

"Article IX provides that disputes between the contracting parties relating to the interpretation, application, or fulfillment of the present convention, including those relating to the responsibility of a state for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice. If 'responsibility of a state' is used in the traditional sense of responsibility to another state for injuries sustained by nationals of the complaining state in violation of principles of international law and similarly, if 'fulfillment' refers to disputes where interests of nationals of the complaining state are involved, these words would not appear to be objectionable. If, however, 'responsibility of a state' is not used in the traditional sense and if these words are intended to mean that a state can be held liable in damages for injury inflicted by it on its own nationals, this provision is objectionable and my Government makes a reservation with respect to such an interpretation."

In view of this statement, I recommend that the Senate give its advice and consent to ratification of the convention "with the understanding that article IX shall be understood in the traditional sense of responsibility to another state for injuries sustained by nationals of the complaining state in violation of principles of international law, and shall not be understood as meaning that a state can be held liable in damages for injuries inflicted by it on its own nationals."

The remaining articles are procedural in nature. By article XIV the convention is to be effective for an initial period of 10 years from the date it enters into force, and thereafter for successive periods of 5 years with respect to those Parties which have not denounced the convention by written notification to the Secretary-General of the United Nations at least 6 months before the expiration of the current period.

Article XV provides that if there are less than 16 parties to the convention, as a result of denunciations, the convention shall cease to be in force from the effective date of the denunciation which reduces the number of parties to less than 16.

Article XVI authorizes any party to request revision of the convention, by notification in writing to the Secretary-General of the United Nations. The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

It is my firm belief that the American people together with the other peoples of the world will hail United States ratification of this convention as another concrete example of our repeatedly affirmed determination to make the United Nations the cornerstone of our foreign policy and a workable institution for international peace and security.

Respectfully submitted.

JAMES E. WEBB,
Acting Secretary.

(Enclosure: Certified copy of convention on the prevention and punishment of genocide.)

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

ARTICLE I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

ARTICLE II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(*a*) Killing members of the group;
(*b*) Causing serious bodily or mental harm to members of the group;
(*c*) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(*d*) Imposing measures intended to prevent births within the group;
(*e*) Forcibly transferring children of the group to another group.

ARTICLE III

The following acts shall be punishable:

(*a*) Genocide;
(*b*) Conspiracy to commit genocide;
(*c*) Direct and public incitement to commit genocide;
(*d*) Attempt to commit genocide;
(*e*) Complicity in genocide.

ARTICLE IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

ARTICLE V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.

ARTICLE VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

ARTICLE VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

ARTICLE VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

ARTICLE IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

ARTICLE X

The present Convention, of which the Chinese, English, French, Russian, and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

ARTICLE XI

The present Convention shall be open until 31 December 1940 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

ARTICLE XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procés-verbal* and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

ARTICLE XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

ARTICLE XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

ARTICLE XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

(*a*) Signatures, ratifications and accessions received in accordance with with article XI;

(*b*) Notifications received in accordance with article XII;

(*c*) The date upon which the present Convention comes into force in accordance with article XIII;

(*d*) Denunciations received in accordance with article XIV;

(*e*) The abrogation of the Convention in accordance with article XV;

(*f*) Notifications received in accordance with article XVI.

ARTICLE XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

ARTICLE XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

For Afghanistan:

For Argentina:

For Australia:
HERBERT EVATT December 11, 1948

For the Kingdom of Belgium:

For Bolivia:
ADOLFO COSTA DU RELS 11 Dec. 1948

For Brazil:
JOAO CARLOS MUNIZ 11 December 1948

For the Union of Burma:

For the Byelorussian Soviet Socialist Republic:

For Canada:

For Chile:
Con la reserva que requiere tambien la aprobacion del Congreso de mi pais.
H. ARANCIBIA LAZO

For China:

For Colombia:

For Costa Rica:

For Cuba:

For Czechoslovakia:

For Denmark:

For the Dominican Republic:
J E BALAGUER 11 Dec 1948

For Ecuador:
HOMERO VITERI LAFRONTE 11 Diciembre de 1948

For Egypt:
AHMED MOH. KHACHABA 12–12–48

For El Salvador:

For Ethiopia:
AKLILOU 11 December 1948

For France:
ROBERT SHUMAN 11 Dec 1948

For Greece:

For Guatemala:

For Haiti:
CASTEL DEMESMIN Le 11 Deciembre 1948

For Honduras:

For Iceland:

For India:

For Iran:

For Iraq:

For Lebanon:

For Liberia:
HENRY COOPER 11/12/48

For the Grand Duchy of Luxembourg:

For Mexico:
LUIS PADILLA NERVO Dec. 14, 1948

For the Kingdom of the Netherlands:

For New Zealand:

For Nicaragua:

For the Kingdom of Norway:
FINN MOE Le 11 Decembre 1948

For Pakistan:
ZAFRULIA KHAN Dec. 11, '48

For Panama:
R. J. ALFARO 11 Diciembre 1948

For Paraguay:
CARLOS A. VASCONSELLOS Diciembre 11, 1948

For Peru:
F BERCKENMEYER Diciembre 11/1948

For the Philippine Republic:
CARLOS P. ROMULO December 11, 1948

For Poland:

For Saudi Arabia:

For Siam:

For Sweden:

For Syria:

For Turkey:

For the Ukrainian Soviet Socialist Republic:

For the Union of South Africa:

For the Union of Soviet Socialist Republics:

For the United Kingdom of Great Britain and Northern Ireland:

For the United States of America:
ERNEST A. GROSS Dec. 11, 1948
For Uruguay:
ENRIQUE C. ARMAND UGON
For Venezuela:

For Yemen:

For Yugoslavia:
ALES BEBLER 11 Dec. 1948

Certified true copy.
For the Secretary-General:

KERNO
Assistant Secretary-General in charge of the Legal Department.

STATEMENT OF DEAN RUSK, DEPUTY UNDER SECRETARY OF STATE

Mr. RUSK. Mr. Chairman and members of the subcommittee, I should first like to express my appreciation for this opportunity to present the State Department's views with respect to the Genocide Convention. I am also grateful to you, sir, for registering the keen personal interest of the Secretary of State in this matter and his regret that he could not be here because of a prior commitment. I am sure that he is ready to do anything that he can in the course of your further deliberations to assist in this matter.

The State Department recommended strongly to the President that the Genocide Convention be submitted to the Senate for advice and consent to ratification.

Mr. Chairman, it is my purpose here to indicate the place this convention has in the general pattern of the foreign relations of the United States. My colleague, Mr. Adrian Fisher, the legal adviser of the State Department, will be able to deal with many of the technical issues which arise in connection with this convention.

HISTORICAL ORIGIN OF THE CONVENTION

The historical origin of the Genocide Convention is a matter of record. Genocide is unfortunately as old as the history of man. The history of our own civilization begins with the deliberate mass exterminations of Christians by the imperial government of Rome. But the worst atrocities of Nero against the Christians failed to reach the level of those perpetrated by Hitler against the Jews. No one can yet have forgotten the organized butchery of racial groups by the Nazis, our enemies in World War II, which has resulted in the extermination of some 6,000,000 Jews. Decent men everywhere were outraged and revolted by the barbaric and bestial conduct of

the rulers of Germany at that time. These events so shocked the conscience of civilized men that after World War II it had come to be accepted that such conduct could no longer be tolerated in civilized society, and that it should be prohibited by the international community.

UN GENERAL ASSEMBLY RESOLUTION CONDEMNING GENOCIDE

This was the psychological framework within which the United Nations began to function as a permanent international organization. The next step was quite logically the adoption of a resolution condemning genocide as a crime under international law by the General Assembly of the United Nations, at its first session, in December 1946. The delegations of three countries—Cuba, India, and Panama—had proposed that the General Assembly consider the problem of the prevention and punishment of the crime of genocide. The matter was considered at length by the Legal Committee of the General Assembly, a committee composed of lawyers representing each of the more than 50 states members of the United Nations. That committee submitted a resolution which was adopted without a single dissenting vote and without change by the plenary session of the General Assembly on December 11, 1946.

This resolution declared that genocide, the "denial of the right of existence of entire human groups," "shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations." The resolution further declared that the "punishment of the crime of genocide is a matter of international concern," and affirmed "that genocide is a crime under international law which the civilized world condemns." Finally, the resolution recommended "that international cooperation be organized between states with a view of facilitating the speedy prevention and punishment of the crime of genocide" and to this end requested that studies be undertaken with a view to drawing up a draft convention on the subject.

FIRST DRAFT CONVENTION

Pursuant to this resolution, a special United Nations committee met in the spring of 1948, and under the chairmanship of the United States representative, Mr. John Maktos, prepared a draft convention on genocide, which was reviewed by the Economic and Social Council of the United Nations in the summer of 1948, and then transmitted to the General Assembly in the fall of 1948. This convention was studied at length by the legal committee of that body and was finally formulated by that committee. It was adopted without a single dissenting vote by the General Assembly on December 9, 1948.

Thus, twice all of the states members of the United Nations have declared that genocide is a matter of international concern. Twice all states members of the United Nations have declared that genocide is a crime under international law. All have declared that international cooperation is needed to stop this practice and that states have a duty to put a stop to such practices within their own respective borders. In view of this history, no one can doubt that genocide is a

subject within the constitutional power of the Federal Government to define and punish offenses against the law of nations.

The State Department memorandum, which was transmitted to the Senate in June 1949 and which may be found in Document Executive O, Eighty-first Congress, first session, reviews in some detail the various provisions of the Genocide Convention.

WHAT THE CONVENTION DOES

I should like to state here in general that the convention does two things: It defines the crime of genocide, and it obligates states to take measures to prevent and punish genocide within their respective territories.

GENOCIDE DEFINED

Genocide, as defined in article II of the convention, consists of the commission of certain specified acts, such as killing or causing serious bodily harm to individuals who are members of a national, ethnical, racial, or religious group, with the intent to destroy that group. The legislative history of article II shows that the United Nations negotiators felt that it should not be necessary that an entire human group be destroyed to constitute the crime of genocide, but rather that genocide meant the partial destruction of such a group with the intent to destroy the entire group concerned.

Senator McMAHON. That is important. They must have the intent to destroy the entire group.

Mr. RUSK. That is correct.

Senator McMAHON. In other words, an action leveled against one or two of a race or religion would not be, as I understand it, the crime of genocide. They must have the intent to go through and kill them all.

RELATION OF GENOCIDE TO HOMICIDE

Mr. RUSK. That is correct. This convention does not aim at the violent expression of prejudice which is directed against individual members of groups.

Senator LODGE. Is that the difference between genocide and homicide?

Mr. RUSK. That is the principal difference, yes.

Senator LODGE. Are there other differences?

Mr. RUSK. There is none, I think, that is important to this case. That is the big difference. Homicide has not been internationally recognized as such, either. We are faced with a situation here where the crime of genocide has been internationally recognized by the community of nations, and whether we ourselves adhere to this convention or not, the international character of the crime of genocide will continue without us, and homicide is not on the same basis.

Senator LODGE. Homicide is not an international offense?

Mr. RUSK. It is not as an offense against the law of nations.

Senator LODGE. It is an extraditable offense, is it not?

Mr. RUSK. Yes, sir.

Mr. ADRIAN S. FISHER (Legal Adviser, Department of State). Yes, sir. There are many domestic crimes not considered to be made a matter of international concern. Because of the extradition treaties, per-

sons committing them may be brought from one country to another for trial. That happens in many crimes that are purely domestic in character.

GENOCIDE HAS NEVER OCCURRED IN THE UNITED STATES

Mr. RUSK. In terms of practical application within the United States, genocide means the commission of such acts as killing members of a specified group and thus destroying a substantial portion of that group, as part of a plant to destroy the entire group within the territory of the United States. It can thus be readily seen that genocide, as defined in this convention, has never occurred in the United States and is not likely to occur here in the future.

The purpose of the convention is, however, to provide for the prevention and punishment of the crime of genocide. The convention does not purport to substitute international responsibility for states' responsibility, but does obligate each state to take steps within its own borders to protect entire human groups in their right to live.

UNITED STATES OBLIGATION UNDER THE CONVENTION

It is important to understand the basic international obligation the United States will assume under this convention. In the language of article V of the convention, the United States and the other contracting states would "undertake to enact, in accordance with their respective constitutions, the necessary legislation to give effect to the provisions of the present convention, and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III."

CONVENTION NOT SELF-EXECUTING

The State Department does not consider this convention to be "self-executing" in the sense that immediately upon its ratification prosecutions could be instituted in the Federal courts. Before this could take place the Federal Criminal Code would have to be amended by Congress. As one Federal court has well put it:

> It is not the function of treaties to enact the fiscal or criminal law of a nation. For this purpose no treaty is self-executing. * * *

(*The Over the Top*, 5 F. (2d) 838 (D. Conn. 1925).)

The United States will be under a duty to enact what has been agreed upon in this convention.

COMPARABLE AGREEMENTS TO WHICH THE UNITED STATES IS A PARTY

It should be noted that the Genocide Convention does not represent the first instance in which the United States has cooperated with other nations to suppress criminal or quasi-criminal conduct which has become a matter of international concern. The United States is party to the multilateral Convention for Protection of Submarine Cables of 1884 (U. S. Treaty Series No. 380, 2 Malloy's Treaties, 1949), by which the contracting states have agreed to punish persons breaking or injuring submarine cables. This was implemented by the act of February 29, 1888, 47 U. S. Code, 21–33. The United States is

party to a convention of 1911 with Great Britain, Russia, and Japan for the preservation and protection of fur seals in the North Pacific Ocean (U. S. Treaty Series No. 564, 3 Malloy 2966), whereby the contracting states undertook to prevent their citizens from engaging in pelagic sealing in certain areas of the North Pacific Ocean and—

to enact and enforce such legislation as may be necessary to make effective the foregoing provisions with appropriate penalties for violations thereof.

(This was implemented by the act of August 24, 1912, 16 U. S. C. 632–643.)

THE PACIFIC SEAL FISHERIES CONVENTION

Senator HICKENLOOPER. Does the present Russian Government respect that treaty of 1911?

Mr. FISHER. We will have to furnish that.

(Subsequently the State Department reported:)

As a result of a notice of abrogation dated October 23, 1940, given by the Government of Japan, the convention of July 7, 1911, between the United States, Great Britain, Canada, Japan, and the U. S. S. R. for the preservation and protection of fur seals terminated October 23, 1941.

Mr. RUSK. The present Russian Government has not denounced that treaty. The treaty is still in effect, but we will have to check on the enforcement of it.

Senator HICKENLOOPER. Have they ever acknowledged it?

Mr. RUSK. My information is that they have.

Senator THOMAS of Utah. Didn't we withdraw Japanese rights under that treaty?

Mr. RUSK. Those rights are in suspension during the period of hostilities and would have to be considered in the case of the Japanese peace settlement.

THE WHALING CONVENTION

Senator THOMAS of Utah. And isn't there another treaty with regard to whaling rights, wherein we deprive certain nations of having certain rights under that treaty?

Mr. RUSK. The whaling convention does not involve the same criminal principles. That is an agreement among nations for their whaling expeditions, but it does not have the same criminal aspect.

Senator THOMAS of Utah. But we have deprived a nation of a right which they had before, have we not?

Mr. RUSK. Yes, sir.

Senator THOMAS of Utah. And depriving a nation of a right which they had before is brought about by the action of more than one nation?

Mr. RUSK. Yes, sir; but those rights and obligations are between governments and do not attach directly to individuals.

Senator THOMAS of Utah. How does the rest of the world look upon those things?

Mr. RUSK. Those whaling conventions do limit the freedom of action of ourselves along with other nations, and where other nations attempt to move into area covered by those treaties, we would attempt to enter into agreements with them.

Senator THOMAS of Utah. You have assumed in the whaling and sealing conventions that only certain nations are interested. The Genocide Convention is more general than that, is it not?

OTHER SIMILAR CONVENTIONS

Mr. RUSK. Yes, sir.

The United States is also party to the multilateral convention to Suppress the Slave Trade and Slavery of 1926 (U. S. Treaty Series No. 778, IV U. S. Treaties (Trenwith) 5022), whereby the contracting states agreed to impose severe penalties not only to repress the slave trade and slavery but also conditions of forced labor. (Existing legislation was adequate, so this convention was not specifically implemented.)

The United States has also entered into other international agreements designed to repress antisocial conduct, such as the white-slave traffic, traffic in and manufacture of narcotic drugs, and the traffic in arms.

Thus, the United States has cooperated in the past with other nations in the suppression of such lesser offenses as the killing of fur seals. It is natural that other nations look to the United States for cooperation in the suppression of the most heinous offense of all, the destruction of human groups.

COMPARABILITY OF THE CONVENTIONS WITH THE GENOCIDE CONVENTION

Senator HICKENLOOPER. May I ask you at this point: It seems to me that these conventions you have referred to all refer to actions for the internal protection of the United States or the protection of what we consider to be our economic right. Do I understand that this genocide proposal, according to your statement, is not apt to affect our internal affairs in the United States, therefore it must be put on a different basis than the so-called international treaties which you have referred to heretofore? In other words, are they comparable in their basic assumptions?

Mr. RUSK. Senator, I did not mean to indicate, in saying that genocide had not been committed in this country, it was not likely to occur, that we had no interest in the commission of the crime of genocide. Certainly our interest is greater than our interest in these other conventions. When large numbers of refugees are created through the crime of genocide, which challenges the conscience of all of us and requires us to provide means for taking care of it, and when crimes like genocide so inflame the international situation as to bring us to the brink of war and are real threats to the peace, the impact on not only our foreign policy but out domestic interest is very great, so long as such things as genocide occur in the world.

Senator HICKENLOOPER. Yes; but the only point of my suggestion there was that the justification for considering a Genocide Convention is probably on a little bit different basis than the consideration of these other international treaties that you have referred to as examples. They have some different foundation, I think.

Mr. RUSK. The same direct commercial connection is not there; that is correct, sir.

Senator HICKENLOOPER. As I understand it, most of these instances you have referred to here as examples have first had a direct and visible effect within our own country. That has been the reason for our becoming interested in adopting such conventions. Now, genocide has not taken place in this country and we probably all agree that it

is very unlikely that it will. So, therefore, we would have to have our reasons for approaching this, I would think, on just a little bit different basis, world-wide interest, or something along the line that you mentioned a moment ago.

THE ROLE OF THE UN GENERAL ASSEMBLY

Senator PEPPER. Mr. Chairman, may I interpolate an inquiry?

The convention in question originated in the Assembly of the United Nations, did it not, Mr. Secretary?

Mr. RUSK. Yes, sir; it originated in a resolution of the Assembly.

Senator PEPPER. Section 3 of article I of the United Nations Charter provides that one of the objectives of the United Nations is—

> to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights, and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

It seems to me this sort of thing might well come within the declared purposes of the United Nations in that section.

I will be anxious to have you get on to that part of the convention which indicates whether anything can be done or not. The distinction that occurs to me between these cases that you have put and the one that we are considering is that generally it is individuals who would be committing those acts and interfering with the cables or fishing contrary to an international agreement and the like, but a policy designed to exterminate a race or group could not possibly be carried on without it being the policy of a government.

WHAT THE UNITED STATES AGREES TO

Now, under this convention, the Government merely agrees that it will not do that sort of thing, and it agrees that it will attempt, in the way appropriate to its constitutional pattern, to obtain legislation that would make the doing of such a thing an offense, but if you take the situation in Germany, when the Nazi government definitely set out upon such a policy, it is unlikely that the Nazi government would have allowed Hitler and his evil hierarchy to be prosecuted in the criminal courts of the country for violating such a law even if they had had it upon the statute books, and I am wondering if you have considered whether this offense, if committed, might be not only a violation of an internal law in the country where it is committed, but a violation of an obligation owed to other nations and peoples, so that it would constitute per se a violation of their obligations, the obligations of the state in which it occurred, under the United Nations Charter, and that it be up to the United Nations Organization, maybe, to take such steps as would bring about redress for that wrong, or the prevention of it, the stopping of it.

GENOCIDE A VIOLATION OF THE OBLIGATIONS OF THE UN

Mr. RUSK. Senator Pepper, I think it would be true not only that genocide would be a violation of a specific convention but that these acts defined as genocide, if committed by governments, would be violations of their obligations to the United Nations.

Senator PEPPER. In what section does that occur?

Mr. RUSK. The convention itself permits any contracting party to call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide, or any of the other acts enumerated in article III.

Senator PEPPER. Then you would have to find the section of the UN Charter which such acts violated. It looks to me like you might well put in the convention a definite article in which each state obligated itself with every other state signing the convention that to breach the obligation of this agreement would be regarded as an offense under international law and a violation of the obligation under the United Nations. Then the authority of the United Nations, or some agency thereof, to act, would have been distinctly clearer, it seems to me.

Mr. RUSK. The obligations of the Charter would continue to apply in the situation, in addition to the special obligations of the Genocide Convention.

WORLD PUBLIC OPINION

Now, if genocide occurs, there are two immediate ways in which the matter could come to the United Nations: One would be to bring it to the United Nations General Assembly under articles XI or XII, in which the United Nations Assembly can discuss the matter fully, can bring the spotlight of world public opinion against this matter, mobilize opinion against the malefactor, make such recommendations as the Assembly feels appropriate to the situation.

That is not legislative or executive in character, that action of the Assembly. It is recommendatory in character, but we have a good deal of evidence that the pressure of world public opinion through the Assembly is a considerable pressure and does make a considerable difference in some of these situations.

Senator PEPPER. But you do not declare in this convention that the prosecution of a policy of this character by a government is specifically a violation of its covenants under the United Nations, or a violation of the obligation it assumes to other member states.

Mr. RUSK. The convention does not specifically do that, Senator. It does, however, make it clear that a convention which has been put to the governments by the United Nations is being violated, and then we have also the second possibility of reference to the United Nations, and that is to the Security Council. It is open to the Security Council to find that the commission of acts of genocide are themselves a threat to international peace and would invoke the powers of the Security Council to deal with threats to international peace, so that the charter stands in considerable reinforcement of this specific convention.

DESIRE FOR AN AFFIRMATIVE DECLARATION

Senator PEPPER. But you give them no new authority to make such finding by this convention. That is a fact, they have that authority under the UN Charter at the present time. I was hoping that maybe there would appear somewhere in here an affirmative declaration as a matter of substantive law that genocide is an international crime and that the governments would undertake, where it should occur, to pros-

ecute and punish those who committed the offense or participated in it, and if governments furthered such a policy, a forthright declaration that such an act on the part of a government would constitute a threat to the peace or a breach of the peace or a violation of the obligation of that government under international law or under the Charter of the UN.

Senator THOMAS of Utah. Right there, may I say, it is the aim, is it not, of this convention, to put it very simply, to restrain nations from making genocide a policy or sustaining it by governmental actions, and isn't the restraint a restraint which comes from the unity of nations in international relations? Isn't that the only way you can justify it in international law?

Mr. RUSK. These obligations are obligations against governments, but the obligations are not only for governments themselves not to commit genocide, but not to permit genocide to be committed within their territories.

Senator THOMAS of Utah. That brings you again to all of the conflicts in interstate law with nations where you have a federation or where you have a confederation or where you have a situation of that kind, which probably runs right into the constitutional provision. Can the United Nations, in its present situation, suggest anything more than a restraining of national action in regard to certain things?

NO CHANGE IN THE UN CHARTER

Mr. RUSK. It can certainly make those suggestions, Senator. I think it can go beyond that under the present Charter, where national action or conditions coming into being within a state become a threat to international peace. That is already a part of the Charter, and when the United Nations turns to the subject of genocide the fact that there is a convention put forward by the United Nations with general ratification would have a considerable bearing upon the effectiveness of the discussion in the Assembly and the pressure of public opinion, and would bear upon the question of whether it is in fact a threat to international peace.

We are adding something to the existing situation in the Charter by the adoption of a convention of this sort, although we are not changing the Charter.

THE MORAL PRINCIPLE

Senator THOMAS of Utah. You are trying to lay out a great moral principle that the extermination of groups is looked upon by the conscience of the world as being bad. That gets pretty close to, if you exterminate one person because he has been guilty of something, that is extermination through association and group action, or just because he happens to have the wrong kind of skin or something of that kind. But in the history of the world and in the history of these various removals of peoples and actually exterminating them, aren't you inviting a review of the conscience of the world, a review of the conscience of all states in what has been done, and from here out let's have another policy?

I am thinking of a situation which might easily arise in any great nation, in the Commonwealth or the United States or any place—

where it is decided to clean up Chinatown in a given city, in any given State—and the people themselves just decide that that cannot be any longer. Can you do anything about that? I am using Chinatown because that is pretty close to home.

Mr. RUSK. I think that involves a form of construction. I would like to ask Mr. Fisher if he agrees with that.

Senator THOMAS of Utah. I did not expect any answer. I am only trying to point out the problems you are facing when you get in. Already you have said that law has decided that a treaty cannot interfere with a country's enforcement of its fiscal policy and with other things of that kind. The line between a fiscal policy and something else is sometimes a pretty narrow line.

I surely, and I think the committee surely, want, before we consider a treaty, the people of the United States at least to know exactly what we are doing and our feelings about these things, and when I say that it is not that I either condemn or take sides in any sort of a judgment, but there have been deliberate actions in the past by states where they have actually encouraged, even in what you might call peacetime, the extermination of certain groups. That has gone on in almost every part of the world, and it has been a state policy, maybe not a defined policy but we are getting pretty close to attempting something that you cannot do anything with in case of great emergencies.

Senator MCMAHON. Before you respond, Mr. Rusk, Senators, Mr. Perlman is here, and he is going to be the next witness, and, of course, representing the Department of Justice it is his primary responsibility to give us the legal interpretation and to resolve the legal questions. Am I not correct, Mr. Perlman?

Mr. PERLMAN. Yes.

Senator MCMAHON. And, since his presentation is to be directed to that, might it not be better to go ahead with Dean Rusk and let him conclude the policy part of the matter?

Mr. RUSK. Mr. Chairman, the State Department would like to discuss the nature of the international obligation which we are assuming, and the distinguished Solicitor General will get into some of the questions that have been raised about the internal constitutional aspects of it.

I think it would be fair to say that we are, in this genocide effort, reviewing our consciences and trying to reinforce them in this very important field, which has been so difficult for us in the international picture.

Senator THOMAS of Utah. That is a gain, is it not?

Mr. RUSK. Yes, sir.

MORAL LEADERSHIP OF THE UNITED STATES

It is an inescapable fact that other nations of the world expect the United States to assert moral leadership in international affairs. The United States has a record of humanitarian diplomacy, beginning with the early days of the Republic when President John Quincy Adams expressed the public sympathies of the American people with the Greeks in their struggle for independence from Turkish rule. The United States Government has remonstrated more than once with other governments regarding their persecution of the Jews: with Ru-

mania in 1902 and with Tzarist Russia in 1891 and 1904. In addition, the United States has also intervened diplomatically with other governments for the protection of Christians, not only on behalf of American missionaries but also on behalf of converts. For example, it is interesting to note that in the treaty of October 8, 1903, between China and the United States, the Chinese Government specifically agreed not to persecute teachers of Christian doctrine nor to molest Chinese converts in the peaceable practices of Christianity. This Government has also intervened diplomatically on behalf of native Christians, in the case of the Armenian population of Turkey.

Finally, it should be recalled that the United States intervened in Cuba in 1898, in the cause of humanity and to put an end, to quote the joint resolution of April 20, 1898, to—

> the abhorrent conditions which have existed for more than 3 years in the island of Cuba, * * * have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization * * *

It is a familiar role, therefore, for the United States to take the lead in raising moral standards of international society. And, prevailing international conditions make it imperative that the United States continue to play this role. We all know too well that millions of human beings are still subjected to the domination of ruthless totalitarian regimes, and that the specter of genocide still haunts mankind. It should be made clear to such governments that the United States and other civilized countries do not condone such conduct now any more than in the past.

43 STATES HAVE SIGNED AND 7 HAVE RATIFIED THE CONVENTION [1]

The Genocide Convention has been signed on behalf of 43 states and has been ratified on behalf of Australia, Ecuador, Guatemala, Iceland, Norway, and Panama. There can be no doubt that the other nations of the world will be tremendously influenced by the action of the United States Senate.

The United States took a leading part in the United Nations in the international effort to outlaw this shocking crime of genocide. I can only express, on behalf of the State Department, our earnest hope that the Senate of the United States, by giving its advice and consent to the ratification of this convention, will demonstrate to the rest of the world that the United States is determined to maintain its moral leadership in international affairs, and to participate in the development of international law on the basis of human justice.

In conclusion, Mr. Chairman, there will be some criticisms offered on this convention, first on the ground that it is too bold and then on the ground that it is too tender. We believe that it is of the utmost importance to our foreign relations to be bold about the principles involved in this proposed convention. We have tried to put it on rational, reasonable, and solid constitutional grounds, and we believe that the convention is solidly founded. But here in the twentieth century we have found a revival not only of man's ability to destroy himself in great numbers through ordinary violence, but a revival as a matter of policy of the principle of destroying large groups of

[1] Since the time this statement was made, Israel has also ratified the Genocide Convention.

our fellow humans, and if the history of the twentieth century is to record that that policy of degeneration has occurred, we would also like to see that the history of the twentieth century record that the United States took an active, early, and immediate leadership to try to stop that sort of thing.

A PART OF THE STRUGGLE TO BUILD A FREE WORLD

Also we are engaged in a very fundamental struggle in our foreign relations between the forces that are trying to build up a free world and the forces that are trying to tear it down. We have committed considerable material resources to that struggle. The attempt to build is a difficult attempt. It is not easy to get an economic system in order or to get an international collective security system in order. It is fairly easy to tear it down. On the physical side the odds are strongly against us. The bridge which cost $1,000,000 in Greece was destroyed by a $25 bomb.

We are in this fight against enormous odds on the physical side because of the nature of the opposition and the opportunities being offered to the opposition for destruction. We therefore must turn to the field in which we have enormous advantages, that is, to the moral, political, and spiritual field, in order to mobilize mankind around these basic measures of freedom and try to offset, thereby, some of the disadvantages on the physical side.

Therefore we look upon this Genocide Convention as a major element in the attempt to mobilize the moral and spiritual resources of mankind in the interest of our common objectives as written in the United Nations, and we believe that if we can offer this leadership we will see a continuing consolidation of mankind behind these principles and through that contribute greatly to the interest, the peace, and the well-being of the American people.

I appreciate very much, sir, this chance to testify.

Senator McMahon. You should never read anything.

Mr. Rusk. Thank you, Mr. Chairman.

Senator Hickenlooper. Mr. Rusk, we have thought of genocide, and as it is defined, as an attack on a specific or religious group. But I do not know that I am clear yet on what is genocide. We can take the situation of Hitler. Without any doubt that was a clear case of genocide, because the statement repeatedly was made that they were going to kill all the Jews, exterminate them.

APPLICABILITY OF THE CONVENTION TO U. S. S. R.

But what about the case of Russia, where millions of people, simply because they may grumble a little about the existing government, are put into concentration camps and starve to death, to be exterminated in that way? Do you consider that genocide? In other words, it is the extermination of people at least with a common excuse for their extermination.

Mr. Rusk. This convention, Senator, is directed toward the attempt to destroy in whole or in part a national, ethnical, racial, or religious group.

Senator Hickenlooper. I am talking about the morals of the thing at the moment.

Mr. RUSK. There is no question that so long as we have totalitarian governments who are committed to the destruction of their opposition there will be other groups who will be the objects of political and governmental attack. There was some discussion as to whether an effort could be made to check that problem, which is a very serious and difficult problem, with this particular convention on genocide, but since these great political issues get into the whole field of political freedom and human rights and free speech and political agitation, it was thought wise to limit this convention to the specific subjects of national, ethnical, racial, or religious groups.

There is no question, however, sir, that the morals of the concentration camp and the destruction of political or class groups are just as bad.

Senator HICKENLOOPER. Why limit it, then, to the limitations you have put on it here? Why not consider the whole business of mass murder?

CONVENTION DOES NOT COVER THE ENTIRE SUBJECT OF HUMAN RIGHTS

Mr. RUSK. An effort is being made, sir, through the discussion of the Declaration of Human Rights and the Convention on Human Rights, to get at these basic political and social freedoms which are affected by the things which you discuss. This particular convention does not meet the entire problem of freedom and group freedom. It is an attempt to single out that part of it which has been most vicious in the past, and which is fairly readily identifiable, and try to get on with that.

Senator HICKENLOOPER. You say it has been most vicious in the past. Is it any more vicious than the mass murder of people who have particular unity of ethnic background or religious belief?

Mr. RUSK. I did not mean to draw a comparison with the use of the word "most." It has been of extreme viciousness.

Senator HICKENLOOPER. There is no question about that.

Mr. RUSK. And I think the memory of the war period was so fresh in people's minds that they were trying to specify and pin down that particular thing in this convention.

Senator MCMAHON. Thank you very much.

Now, Mr. Perlman, the Solicitor General of the United States.

STATEMENT OF PHILIP B. PERLMAN, SOLICITOR GENERAL OF THE UNITED STATES

Mr. PERLMAN. Mr. Chairman and gentlemen of the committee, this statement is made on behalf of the Department of Justice and outlines the views of that Department on the Convention on the Prevention and Punishment of the Crime of Genocide. The statement is submitted with the express approval of the Honorable J. Howard McGrath, Attorney General of the United States, and former member of this body, who has requested me to say that he hopes your subcommittee will recommend prompt consent to ratification.

The background

On June 16, 1949, the President transmitted the convention to the Senate, urging that the Senate advise and consent to ratification.[1]

[1] Senate Document, Executive O, 81st Cong., 1st sess., 95 Congressional Record 7980.

The Genocide Convention was unanimously adopted by the General Assembly of the United Nations on December 9, 1948, after consideration of the subject going back several years. It has been signed by 43 governments, including the United States. Seven countries of the necessary twenty for the convention to come into force [2] have already ratified.

"Genocide" is said to be a new name for an old crime. Coined from the Greek "genos," meaning tribe or race, and the Latin "caedere" meaning to kill (or "cide" meaning killing), it purports to describe the crime of mass annihilation of religious, racial, national, and ethnical groups.[3] The examples pointed to run from ancient to modern times, among them the destruction of Carthage, the attempt to destroy the early Christians by the Romans, the killing of Armenians in Turkey during the First World War, and the recent extermination of millions of Jews, Poles, and others by the Nazis.[4]

The Nurnberg Tribunal, an international military court, in its judgment of October 1, 1946, convicted some of the highly placed Nazis for, among other things, "crimes against humanity," which included murder, extermination, enslavement, and deportation of civilian populations, and persecutions on political, religious, or racial grounds; but the Tribunal felt bound by the jurisdictional limits of its charter to consider only such of these acts as were also war crimes or committed in execution of or connection with aggressive war.[5] Thereafter, on December 11, 1946, the first session of the United Nations General Assembly, while confirming the principles of international law recognized by the Charter of the Nurnberg Tribunal and the Judgment of the Tribunal,[6] adopted the following separate resolution:

"Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

Many instances of such crimes of genocide have occurred when racial, religious, political, and other groups have been destroyed, wholly or in part.

The punishment of the crime of genocide is a matter of international concern.

The General Assembly, therefore,

Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices—whether private individuals, public officials, or statesmen, and whether the crime is committed on religious, racial, political, or any other grounds—are punishable;

Invites the Member States to enact the necessary legislation for the prevention and punishment of this crime;

Recommends that international cooperation be organized between States with a view tod facilitating the speedy prevention and punishment of the crime of genocide; and, to this end,

Requests the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly.[7]

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[2] Senate Document, Executive O, 81st Cong., 1st sess., p. 9, article XIII.

[3] 95 Congressional Record, A1270, Lemkin, The United Nations Genocide Convention; UN Research Background Paper No. 52, August 31, 1949; 58 Yale Law Journal 1142, 1143, note 13.

[4] Ibid.

[5] Nuremberg Judgment, p. 84, quoted in The Charter and Judgment of the Nuremberg Tribunal (UN Doc. A/CN.4/5, March 3, 1949, pp. 65–72, 93).

[6] General Assembly Resolution 95 I, UN Doc. A/64/Add. 1, January 31, 1947, p. 188.

[7] General Assembly Resolution 961, December 11, 1946, UN Document A/64/Add. 1. January 31, 1947, pp. 188, 189.

A draft convention was prepared, which then passed through several stages of consideration and development by organs of the United Nations and participating governments.[8] Finally, on December 9, 1948, 2 years after the initial resolution, the General Assembly adopted the convention which is now being considered for ratification by the Senate.[9]

The convention

Under the convention, the parties confirm in article I that genocide, whether committed in time of peace or in war, is a crime under international law which they undertake to prevent and punish.

Articles II and III set forth the punishable acts. If committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such, genocide covers killing members of the group, causing them serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about their physical destruction in whole or in part, imposing measures to prevent births within the group, or forcibly transferring children of the group to another group. Not only are these acts punishable, but so are conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, or complicity in genocide.

Article IV provides that the guilty shall be punishable whether they are constitutionally responsible rulers, public officials, or private individuals.

Under article V, the contracting parties undertake to enact, in accordance with their respective constitutions, necessary legislation to give effect to the provisions of the convention, and, in particular, to provide effective penalties for persons guilty of the punishable acts.

Article VI provides that the trial of persons accused of punishable acts shall be by a competent tribunal of the state in the territory of which the act was committed. Alternatively, punishable acts may be tried by such international penal tribunal as may have jurisdiction with respect to those contracting states which shall have accepted its jurisdiction. It is noted, in the report to the President, that there is presently no international tribunal authorized to try anyone for the crime of genocide and that consent of the United States to an agreement establishing such a tribunal would be necessary before it could be binding upon the United States.[10]

Article VII provides that for the purpose of extradition genocide and the other punishable acts shall not be considered political crimes. The contracting states pledge themselves to grant extradition for these offenses in accordance with their laws and treaties in force.

Article VIII recognizes the right of a contracting state to call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as may be appropriate for the prevention and suppression of genocide.

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[8] See Resolution of the Economic and Social Council, 47 IV, March 28, 1947; Draft Convention on Genocide prepared by the Secretary General, UN Document E/447, June 27, 1947; Resolution of the General Assembly, 180 II, November 21, 1947; Resolution of the Economic and Social Council, 117 VI, March 3, 1948; Report of the Ad Hoc Committee on Genocide, UN Document E/794, April 5 to May 10, 1948; Resolution of the Economic and Social Council, 153 VII, UN Document E/1049, August 26, 1948; Report of the Sixth Committee, Third Session, General Assembly, UN Document A/760, December 3, 1948.

[9] General Assembly Resolution 260 III, UN Document A/810, p. 174, adopted unanimously; see Senate Document, Executive O, 81st Cong., 1st sess., p. 3; see also subsequent resolution of Fourth Session of the General Assembly inviting non-members of the United Nations to become parties to the Convention, resolution, December 3, 1949, UN Document A/1202.

[10] Senate document, Executive O, 81st Cong., 1st sess., p. 5.

Under article IX disputes between the contracting states relating to the interpretation, application or fulfillment of the convention, including disputes relating to the responsibility of a state for acts of genocide, shall be submitted to the International Court of Justice at the request of any of the states party to the dispute.

The remaining articles X to XIX are the technical details relating to signature, ratification or accession, coming into force and duration of the convention.

The treaty power

In our view the United States has complete authority to enter into the Genocide Convention. The treaty power is being invoked, and

> that the treaty power of the United States extends to all proper subjects of negotiation between our government and the governments of other nations is clear (*Geofroy* v. *Riggs*, 133 U. S. 258, 266 (1890); *Asakura* v. *Seattle*, 265 U. S. 332, 341 (1924)). The treaty-making power is broad enough to cover all subjects that properly pertain to our foreign relations * * * (*Santovincenzo* v. *Egan*, 284 U. S. 30, 40 (1931)).

The contention advanced by some of the critics of the convention that these subjects must be completely or exclusively "foreign" or "international" or "external" overlooks the whole history of treaty making which has, from the first, dealt with matters having direct impact on subjects intimately of domestic and local concern. See *Ware* v. *Hylton* (3 Dall. 199 (1796)), holding the 1783 treaty of peace with Great Britain preserved debts owed British creditors by American citizens, and was superior to a statute of Virginia which purported to effect a discharge; *Hopkirk* v. *Bell* (3 Cranch. 454 (1806)), holding that the 1783 treaty of peace with Great Britain prevented the operation of the Virginia statute of limitations on debts owed Britons, contracted before the treaty; *Fairfax's Devisee* v. *Hunter's Lessee* (7 Cranch. 603 (U. S. 1813)), holding that a 1794 treaty with Great Britain confirmed title to land in Virginia in a British citizen notwithstanding the law of Virginia; *Chirac* v. *Chirac* (2 Wheat. 259 (U. S. 1817)), holding that a 1778 treaty with France enabled subjects of France to purchase and hold lands in the United States and overcame the effect of a Maryland escheat law; *Hauenstein* v. *Lynham* (100 U. S. 483 (1879)), holding that a treaty with Switzerland removed the disability of a Swiss citizen under Virginia law to inherit real property, the Supreme Court stating specifically:

> We have no doubt that this treaty is within the treaty-making power conferred by the Constitution (100 U. S. 490)—

and to the same effect regarding inheritance by a French citizen under a treaty with France, *Geofroy* v. *Riggs* (133 U. S. 258 (1890)); *Missouri* v. *Holland* (252 U. S. 416 (1920)), holding the 1916 treaty with Great Britain for protection by the United States and Canada of migratory birds which traverse parts of both countries, and congressional implementation of the treaty, to be a proper exercise of the treaty-making power and Federal legislative power thereunder; *Asakura* v. *City of Seattle* (265 U. S. 332 (1924)), holding a treaty with Japan, which provided that citizens and subjects of both countries shall enjoy liberty to carry on trade, and so forth, in the territory of each other on equal footing, overcame a city ordinance which limited pawnbroking to United States citizens; *Veilson* v. *Johnson* (279 U. S. 47 (1929)), holding an Iowa inheritance tax was subject

to a treaty with Denmark, which forbade discriminating taxes on the removal of personal property by citizens of either country from the other; *Santovincenzo* v. *Egan* (284 U. S. 30 (1931)), holding a convention with Italy and a treaty with Persia governed the intestacy of an Italian subject in preference to the escheat law of New York, the Supreme Court stating specifically:

> There can be no question as to the power of the Government of the United States to make the treaty with Persia or the Consular Convention with Italy (284 U. S. 40).

That genocide is equal with descent and distribution of real and personal property, or nondiscrimination on grounds of citizenship in business opportunities and taxation, or protection of migratory birds, as a subject appropriate for action under the treaty-making power seems to us an inescapable conclusion. The historical background of the Genocide Convention indicates the view of the representatives in international affairs of practically all the governments of the world on the appropriateness and desirability of an international agreement "to outlaw the world-shocking crime of genocide."[11] This Government has shared in this view; in fact, has taken a leading part in shaping the convention.[12] If there is any issue here as to whether the exercise of the treaty-making power is the appropriate means through which genocide should be effectively condemned, and we doubt the validity of such an issue, the view of the President as the principal organ of the United States in foreign affairs, and of the State Department as his representative in such matters, is entitled to great weight.

But more than this, as a Nation, by action of the President and the Senate, the United States has already made clear its policy on the propriety of giving due international regard, by cooperative methods, for the promotion and protection of human rights, of which the fundamental right to life of whole groups of people is certainly one.

REFERENCES TO THE CHARTER OF THE UN

A question was asked Mr. Rusk about the United Nations Charter and its covering such a situation as this, I think Mr. Rusk listed one covering item. We have listed seven separate references to the Charter that indicate that this subject that is dealt with in the Geoncide Convention, the subject of human rights and fundamental freedom, was intended to be one of the matters over which the United Nations should function, and that we think is made clear not by the one section but seven different sections that we have listed:

ARTICLE 1

> The purposes of the United Nations are * * *
>
> 3—to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion (59 Stat. 1037).

ARTICLE 13

> 1. The General Assembly shall initiate studies and make recommendations for the purpose of * * *

[11] President's message, Senate document, Executive O, 81st Cong., 1st sess., p. 2.
[12] Ibid., pp. 2, 3–4.

(b) * * * assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (59 Stat. 1039).

ARTICLE 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote * * *

(c) universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language, or religion (59 Stat. 1045–1046).

ARTICLE 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55 (59 Stat. 1046).

ARTICLE 62

2—It [the Economic and Social Council] may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all (59 Stat. 1046).

ARTICLE 68

The Economic and Social Council shall set up commissions in economic and social fields for the promotion of human rights, and such other commission as may be required for the performance of its functions (59 Stat. 1047).

ARTICLE 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be * * *

(c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world (59 Stat. 1049).

These provisions, as a minimum, embody a clear expression of policy, of our intention (as well as that of other nations) to promote respect for human rights by peaceful international cooperation. The treaty method is the best known means of achieving international cooperation. The Genocide Convention is a treaty, and whether or not it be regarded as stemming from obligations undertaken under the United Nations Charter, the reservation of domestic jurisdiction in article 2 (7) of the Charter—

Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state—

and so forth, is of no relevance on the question as to whether genocide and its punishment are appropriate subjects for a new treaty. This is so because, first, the Genocide Convention does not purport to grant any jurisdiction to the United Nations which it does not already possess, and second, the acceptance of the Genocide Convention will be a separate contractual exercise of sovereign power by each state accepting the Convention.

OUR OBLIGATIONS UNDER THE CONVENTION

Senator THOMAS of Utah. That is the whole point of what I was asking Dean Rusk. Will you enter into that a little further, Mr. Perlman? There is no question in my mind at all about the wisdom

of the convention, the desire of the convention, the morals of the convention, and all the rest of it, but there is a question in my mind about understanding what we can do and what we will do as a Government before we enter into making these promises. There you happen to come to the point that I was trying to get Dean Rusk to explain. I think there is an answer, all right. I am not in any way trying to cover up your answer. I think it is there.

Mr. PERLMAN. I want to read the following paragraph, and then I will deal with the particular sections that I think answer your question, or at least contain the information that I think you are seeking.

As a practical matter, the question of ratifying the convention is not so much a legal problem as it is primarily one of policy for the decision, in this instance, of the President acting with the advice and consent of the Senate. In arriving at a judgment on the desirability of the Genocide Convention, the unanimous approval of the General Assembly of the United Nations and the subsequent signatures of 43 states are entitled to much persuasive force. Moreover, the United States, as a leading protagonist for world peace and order under law, is committed to cooperative efforts to prevent and stamp out the devastating lawlessness represented in genocide. In the absence of any other plan or remedy, the means chosen by the General Assembly of the United Nations, through the Genocide Convention, should command the support of civilized people everywhere in the world. The American experience with the Bill of Rights weighs heavily in favor of the belief that instruments such as these are significant in the advancement of human rights; even as the recent international experience at Nuremberg has shown how significant treaties and other international agreements such as the Pact of Paris (Kellogg-Briand Pact) can be in evolving international principles of decent conduct among nations and among men.

REFERENCE OF INTERPRETATION TO THE INTERNATIONAL COURT OF JUSTICE

The specific provisions that I think contain at least some of the information that you were seeking to have explained are contained in, for instance, article 9 (I call your attention to that) of the convention, which provides that disputes between contracting parties relating to the interpretation, application or fulfillment of the present convention, including those relating to the responsibility of a state for genocide or for any of the other acts enumerated in article 3, shall be submitted to the International Court of Justice at the request of any of the parties to this dispute.

CONNALLY-VANDENBERG RESOLUTIONS PROBABLY MODIFIED

Senator THOMAS of Utah. When we passed the resolution on our adherence to the International Court of Justice, we included two reservations. Is there a conflict between either of those reservations and this provision?

Mr. PERLMAN. You are speaking, I think, of the so-called Connally resolutions?

Senator THOMAS of Utah: Connally and Vandenberg, both of them.

Mr. PERLMAN. I have not considered it in connection with this amendment, particularly, but I think that a ratification of this convention now would take precedence over any other action.

Senator THOMAS of Utah. Then you do think that this convention probably modified that?

Mr. PERLMAN. If it was in conflict it would take precedence.

Senator THOMAS of Utah. Of course I made the point that both resolutions were not necessary because they were dealing with questions that were not questions in international law.

Mr. PERLMAN. Yes, sir.

Senator THOMAS of Utah. You are surely not going so far as to attempt to remove the difference between international and local law in these things, are you?

Mr. PERLMAN. Not at all, and I think that we make that clear.

Senator THOMAS of Utah. But you do think that probably our adoption of this provision in this convention might be considered by the Court itself as a slight modification of those two amendments, do you?

Mr. PERLMAN. I would have to look at the language and refresh my recollection as to the Connally amendment. I haven't thought that there was a conflict between them.

Senator THOMAS of Utah. I don't think there is, but your statement that the Court itself would take into consideration that probably a later judgment would give sanction——

Mr. PERLMAN. Well, this would be an agreement that if there was a dispute between this country and some other country or countries as to the interpretation or as to the fulfillment of the convention, that it would be submitted to the International Court for decision if there was any possibility of conflict.

Senator THOMAS of Utah. Do we go so far as to promise to submit, regardless of our previous declarations?

Mr. PERLMAN. I think that this would be a promise to submit if this convention is ratified. We would be bound to do that; it says "shall be submitted." We would agree to submit it, if there was any difference between our interpretation of the effect of this convention and the interpretation that was put on it by any other nation, or if there was a difference of opinion between our country and some other country or countries as to whether or not obligations were being fulfilled under this convention. We are obligated to submit it to the International Court of Justice for determination.

The question of constitutional limitations on the treaty power

It is accurate to say that the treaty power extends to all proper subjects of negotiation with other governments, and that genocide or the Genocide Convention appears to be such a proper subject of negotiation. However, it has been suggested by critics of the convention that the treaty power is not without limitations, and that the convention or parts of it may conflict with these. The arguments are grounded principally in a statement contained in the case of *Geofroy* v. *Riggs* (133 U. S. 258, 267 (1890)):

> The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the Government or of its departments, and those arising from the nature of the Government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the Government or in that of one of the States, or a cession of any portion of the territory of the latter without its consent. * * * But with these exceptions, it is not perceived that there is any limit to the questions

which can be adjusted touching any matter which is properly the subject of negotiations with a foreign country.

The constitutional restraints or limitations suggested by this statement appear to be of two kinds—express prohibitions, and those implied from the nature of the Government and the States. As a matter of fact the Supreme Court may have whittled down the breadth of the suggestion, in its later opinion in *Asakura* v. *Seattle* (265 U. S. 332, 341 (1924)) when it said:

The treaty-making power of the United States is not limited by any express provision of the Constitution, and, though it does not extend "so far as to authorize what the Constitution forbids," it does extend to all proper subjects of negotiations between our Government and other nations.

In *Missouri* v. *Holland* (252 U. S. 416 (1920)), the Supreme Court specifically eliminated the tenth amendment to the Constitution as a possible limitation on the treaty power. What Mr. Justice Holmes had to say for the Court on the existence of limitations on the treaty power generally is also of importance:

Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of he United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, "a power which must belong to and somewhere reside in every civilized government" is not to be found. * * * The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago (252 U. S. at 433).

It is significant that no treaty of the United States has been held unconstitutional.[13]

The express power of Congress to define and punish offenses against the law of nations is not a limitation on the treaty power

An argument is made by those who oppose the Genocide Convention as a whole that article I, section 8, clause 10, of the Constitution confers on Congress the power to "define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;" and that for the President and Senate to bind this country to a treaty obligating the United States to punish an offense under international law (per art. I of the convention) is a usurpation of the legislative power, particularly if the treaty is self-executing.

In order not to obscure the real argument with assumptions that are not factual, it should be observed at once that article V of the convention specifically contemplates domestic legislative action, in particular to prescribe penalties since none is provided. This part of the convention, requiring as it does legislative action, is not self-executing under the principles laid down by the Supreme Court, *Foster* v. *Neilsen* (2 Pet. 253 (U. S. 1829)); and for the United States to enact the necessary legislation to give effect to the provisions of the convention "in accordance with * * * [its] Constitution[s]" convention art. V), and to try guilty persons "by a competent tribunal of the State in the territory of which the act was committed" (convention art. VI),

[13] *Indemnity Insurance Co.* v. *Pan American Airways* (58 F. Supp. 338, 340 (D. C., S. D. N. Y., 1944)), and sources cited.

requires action by Congress prescribing the offenses punishable and conferring criminal jurisdiction on the courts of the United States.[14]

This is not to say that Congress may not, in its discretion, use the definitions of the offenses under international law, in this case as contained in the convention, just as it has validly provided punishment for the crime of piracy "as defined by the law of nations" (*United States* v. *Smith*, 5 Wheat. 157 (U. S. 1820)).[15]

Thus, as the result of the situation created by the very terms of the convention itself, there is removed from consideration any notion that the treaty, if accepted, will bypass the Congress, or will in itself legislate Federal criminal law. In this connection it has been observed:

> It is not the function of treaties to enact the fiscal or criminal law of a nation. For this purpose no treaty is self-executing.[16]

IMPLEMENTING LEGISLATION REQUIRED—"SELF-EXECUTING" DEFINED

Senator HICKENLOOPER. The convention, as it is contemplated, is in effect self-executing because it binds us to pass laws implementing it. The discretion as to whether or not we pass laws is taken away from us. We agree and are bound by the provisions of the convention to pass laws. Therefore to that extent it is self-executing. The details of the execution may be left somewhat to us.

Mr. PERLMAN. Senator, that has not been considered to be a self-executing provision.

Senator HICKENLOOPER. What do you mean by self-executing? I would like to get this straight so far as the definition is concerned.

Mr. PERLMAN. I mean that if you have a treaty that is so complete in itself that it does not require any further legislative action, that is a self-executing treaty. Here you have a treaty that by its own terms contemplates that legislative action must be taken by the respective parties.

Senator HICKENLOOPER. And if we do not take legislative action?

Mr. PERLMAN. There is no penalty provided.

Senator HICKENLOOPER. Except the moral lapse for which we are responsible.

Mr. PERLMAN. That is right. We bind ourselves to take what we will regard as the proper way to carry out our obligation under this convention. In that connection every other nation does the same thing. And when it is passed, unless it should be so patently an evasion, that would be a fulfillment of our obligation. This kind of provision is not considered a self-executing provision.

Senator HICKENLOOPER. Well, to a limited degree it is not self-executing. I am just wondering if, in its whole broad construction, it is not in fact a self-executing treaty. In other words, we agree to pass certain laws. We expect to keep our word morally and literally. So, assuming that we are that kind of people, we therefore must, once we adopt this convention, go forward and adopt laws implementing this convention, so that we have not complied with the treaty until we

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[14] *Viereck* v. *United States* (318 U. S. 234, 241 (1943)); *Jerome* v. *United States* (318 U. S. 101, 104–105 (1943)); *Jones* v. *United States* (137 U. S. 202, 211 (1890)); *United States* v. *Sutter* (160 F. (2d) 754, 756 (7 Cir. 1947)).

[15] Note that the phrases "international law" and "law of nations" are interchangeable and synonymous (1 Oppenheim's International Law (7th ed., 1948), 4; Nussbaum, A Concise History of the Law of Nations (1947), 2).

[16] The Over the Top (5 F. (2d) 838 (D. C. Conn., 1925)).

have done certain things that we have agreed to. Therefore the treaty could be argued to be a self-executing treaty, perhaps.

Mr. PERLMAN. Senator, that really is not regarded as a self-executing provision when it is left, as here, to the law-making body of the Nation, in its discretion, to determine what kind of legislation should be passed to implement this treaty. It is not complete in that respect, therefore it is not within all the accepted definitions self-executing.

Senator HICKENLOOPER. Yes, but if we adopt the convention, then we must go ahead and adopt legislation. We are compelled to.

Mr. PERLMAN. You are compelled to.

Senator HICKENLOOPER. I mean morally. Of course we could sit idly by and not do it, but we have agreed that we will, so we are bound by our agreement to go ahead and adopt expeditiously implementing legislation under this treaty.

Mr. PERLMAN. That's right. But the thing I do want to call your attention to, and of course you understand that, is, the character of the legislation that you pass is a matter within the discretion of the legislative body that enacts it.

Senator HICKENLOOPER. But we have no discretion on the question of whether or not we pass legislation.

Mr. PERLMAN. That is right. You have agreed to pass legislation to implement this treaty. That is the purpose of it.

DETERMINATION OF ADEQUACY OF NATIONAL LEGISLATION

Senator THOMAS of Utah. And you have set a certain standard for that legislation, have you not, by this treaty?

Mr. PERLMAN. I hope so. I hope so.

Senator HICKENLOOPER. Who will determine whether the legislation that is passed under this treaty in the various countries is adequate, or considered to be sufficient?

Mr. PERLMAN. The Congress of the United States.

Senator HICKENLOOPER. Suppose the Congress of the United States merely passed a statute recognizing the participation in the Genocide Convention, that we have signed up, and then just passes a law and says that genocide is hereby declared to be bad business, or that we are against it morally, or something of that kind, and sets up no specific penalties or punishments nor any other machinery to punish or prevent the commission of acts of genocide. Is that entirely within our discretion? Does any other nation have a right to question it? I am aware that we have general misdemeanor statutes of a very mild nature that apply when no specific penalties are prescribed, but can other nations raise a proper question? Is there a forum where they can question the adequacy of our implementing of this law?

IN EFFECT ADEQUACY CAN BE PASSED UPON BY AN INTERNATIONAL COURT

Mr. PERLMAN. I think so, under the article that I read—I think it is article 9—which provides that disputes as to fulfillment, and that is what we are discussing at the moment, shall be submitted to the International Court of Justice.

Senator HICKENLOOPER. So that under that theory, then, the control over the adequacy of the inadequacy of the laws we pass internally over this matter would be surrendered to an international group. I say "in effect."

Mr. PERLMAN. Not the control, Senator. Following your hypothetical case through, some other nation would first have to object, if a number of the citizens of this country did not object themselves. But if some other country objected, or some other nation, because that article 9 deals only with nations, not with individuals, some other nations would have to submit a question to the International Court as to our failure, in their opinion, to fulfill the obligations under this convention, and the International Court presumably would hear the matter, and if it agreed that we had not properly fulfilled our obligations, it would hand down a finding to that effect, and we would have that criticism.

MINIMUM LEGISLATION SUBJECT TO OUR DETERMINATION

Senator HICKENLOOPER. Would they have any directive power? Could they go further and prescribe the minimum limitations of our legislation?

Mr. PERLMAN. No. Nothing that the Court would do would be mandatory on this country. We would face the bar of public opinion throughout the world as having violated an obligation which we had solemnly assumed, that is all. To resume my statement:

DEFINITION OF INTERNATIONAL CRIME NO LIMITATION ON TREATY-MAKING POWER

The argument, then, boiled down, is that the existence of the express congressional power—regarding offenses against the law of nations—eliminates or limits treaty power to deal with that subject.

This view has been rejected by our long-standing practice. Typical are the numerous treaties which include provisions that inhabitants of either contracting state, who take letters of marque from an enemy to privateer against the government or inhabitants of the other contracting state, shall be punished as pirates.[17] Congress has given due recognition to this kind of treaty action by providing that aliens performing acts declared by treaty to be piracy shall be punished as pirates by imprisonment for life (18 U. S. C. 1653).

SECRETARY MARCY'S VIEW OVERRIDDEN

At one point, in 1854, the then Secretary of State Marcy objected to an article, similar to those cited in the above treaties, in a proposed treaty with Venezuela, on the ground that it would encroach on the constitutional power of Congress to define and punish piracies and felonies on the high seas.[18] He indicated that "several" treaties had included such provisions, but said that they were probably contracted by oversight of the constitutional provision concerning piracy. "Several" actually totaled 14 such treaties concluded prior to Mr. Marcy's

[17] These provisions will be found in the following treaties: Brazil (1828), art. 24, 1 Malloy Treaties, 141; Central American (1825), art. 24, 1 Malloy Treaties, 167; Chile (1832), art. 22, 1 Malloy Treaties, 178; Colombia (1824), art. 22, 1 Malloy Treaties, 299; Colombia (1846), art. 26, 1 Malloy Treaties, 310; Ecuador (1839), art. 25, 1 Malloy Treaties, 428; France (1778), art. 21, 1 Malloy Treaties, 475; Guatemala (1849), art. 24, 1 Malloy Treaties, 869; Netherlands (1782), art. 19, 2 Malloy Treaties, 1239; Peru (1870), art. 28, 2 Malloy Treaties, 1423; Peru (1887), art. 26, 2 Malloy Treaties, 1439; Prussia (1785), art. 20, 2 Malloy Treaties, 1498; Salvador (1850), art. 26, 2 Malloy Treaties, 1545; Salvador (1870), art. 26, 2 Malloy Treaties, 1559; Spain (1795), art. 14, 2 Malloy Treaties, 1645; Sweden (1783), art. 23, 2 Malloy Treaties, 1738.

[18] 5 Moore, International Law Digest (1906), 169.

letter;[19] and thereafter in the period 1870–87, notwithstanding Mr. Marcy's objection in 1854 to the Venezuela Treaty, three other similar treaties were concluded.[20]

Examples of other treaties containing engagements to punish criminally wrongful conduct are contained in the multilateral convention for Protection of Submarine Cables,[21] the multilateral Convention for the Preservation and Protection of Fur Seals in the North Pacific Ocean,[22] and the multilateral Convention to Suppress the Slave Trade and Slavery of 1926.[23] Congress implemented the submarine cable convention with criminal penalties in the act of February 29, 1888.[24] Congress implemented the fur seals convention with criminal penalties in the act of August 24, 1912,[25] thereafter repealed in 1944 after Japan abrogated the treaty.[26] In the case of the slavery convention the existing broad slavery and peonage prohibitions and the penalties of the criminal code apparently were regarded as adequate.[27]

In other fields, examples of treaties on subjects otherwise committed to Congress are even more numerous. We have had or have treaties on commercial aviation, trade-marks, copyrights, trade in dangerous drugs, traffic in women, naval armament, and taxation, to enumerate a few, all of which equally comport with the delegated powers of Congress.[28] Recently objection was made before a court to the Warsaw Convention [29] a treaty governing phases of civil aviation, on the ground that in violation of the Constitution it encroached on the power of Congress to regulate commerce. The court in rejecting the challenge stated:

> one cannot fail to observe the uninterrupted uniformity of the practice by which treaties of commerce, from the earliest days of the Republic, have been made in the manner now challenged, without arousing so much as a doubt as to the propriety of the course taken.[30]

CALHOUN ON THE SCOPE OF THE TREATY-MAKING POWER

One hundred years earlier, in 1844, Secretary of State Calhoun very cogently set forth his views on the subject:

> From the beginning and throughout the whole existence of the Federal Government, it [the treaty-making power] has been exercised constantly on commerce, navigation, and other delegated powers, to the almost entire exclusion of the reserved, which, from their nature, rarely ever come in question between us and other nations. The treaty-making power has, indeed, been regarded to be so comprehensive as to embrace, with few exceptions, all questions that can possibly arise between us and other nations, and which can only be adjusted by their mutual consent, whether the subject matter be comprised among the delegated or the reserved powers. So far, indeed, is it from being true, as the report supposes, that the mere fact of a power being delegated to Congress excludes it from being the subject of treaty stipulations, that even its exclusive delegation, if we may judge from the habitual practice of the Government, does not—of which

[19] Crandall, Treaties, 2d ed., fn. p. 242; and note 17, supra.
[20] Ibid., and see list cited, supra, note 17.
[21] 24 Stat. 989, 2 Malloy Treaties, 1949.
[22] 37 Stat. 1542, 3 Malloy Treaties, 2966.
[23] 4 U. S. Treaties (Trenwith), 5022.
[24] 47 U. S. C. 21–33.
[25] 16 U. S. C. 632–644.
[26] 58 Stat. 104.
[27] See 18 U. S. C. 1581–1588.
[28] See McDougal and Leighton, The Rights of Man in the World Community, 14 Law and Contemporary Problems, 490, 521–523 (1949).
[29] 49 Stat., pt. 2, 3000.
[30] *Indemnity Insurance Co.* v. *Pan American Airways*, 58 F. Supp. 338, 339–340 (D. C., S. D. N. Y., 1944).

the power of appropriating money affords a striking example. It is expressly and exclusively delegated to Congress, and yet scarcely a treaty has been made of any importance which does not stipulate for the payment of money. No objection has ever been made on this account. The only question ever raised in reference to it is whether Congress has not unlimited discretion to grant or withhold the appropriation.[21]

SECRETARY KELLOGG'S VIEW

The situation was more recently summed up by another former Secretary of State, then Senator Kellogg:

The argument is as old as the history of treaties in this country. It was presented with great ability by the opponents of the Jay Treaty and overcome by the able statesmen of that day, foremost among whom was Alexander Hamilton. From that day to the present time the question has been frequently raised in connection with treaties for the payment of money, regulating commerce, fixing import duties, regulating rights of trade with foreign countries, fixing boundaries, and various other subjects, the objection being that as the power to legislate in relation to these matters was in the entire Congress, any treaty made by the President and the Senate was therefore void. But these objections have proved unavailing and a large number of treaties have been made and ratified by the Senate where legislation was necessary to carry them to operation—[22]

Borrowing, and applying as equally apt here, what the Supreme Court said in regard to another form of exercise of power in the field of international relations, a—

practice such as we have here, evidenced not by only occasional instances, but marked by the movement of a steady stream for a century and a half of time, goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice, to be found in the origin and history of the power involved, or in its nature or in both combined.[23]

EFFECT OF A RESERVATION ON FREEDOM OF IMPLEMENTATION

Senator HICKENLOOPER. May I ask you this: You may touch on it a little later, Mr. Perlman. Suppose a reservation might be adopted to this convention saying that complete jurisdiction and discretion over what legislation we might pass to implement this convention would be lodged in the United States without surrender to any group, international or otherwise; in other words, we just said, "We will adopt the convention, but we will have no one question the adequacy of our laws and no forum question the adequacy of our laws outside the United States itself," would that, in your opinion, destroy the effect of the genocide convention? Would that violate some of the basic structure of this whole program?

Mr. PERLMAN. Senator, I do think it would be most unfortunate, for a reason that I will come to later in this discussion. We do not have, as I am going to point out, under our form of government, any possibility of genocide in this country, and if we would start out with an attitude that as to any legislation that we pass to implement we are going to be the sole judge, it certainly would tell other nations where there is a possibility of genocide that they should make similar reservations.

Senator HICKENLOOPER. I think that follows completely.

Mr. PERLMAN. And I just don't think that we would be reserving anything here that would mean anything to the Congress or to the people of this country if we made such a reservation.

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[21] 5 Moore, International Law Digest, 164.
[22] Senate debate on the Treaty of Versailles, quoted in 5 Hackworth, Digest of International Law, 12.
[23] *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 327–328 (1936).

WOULD NOT DESTROY THE CONVENTION

Senator HICKENLOOPER. Would you say, then, that if we adopt such a resolution it would destroy the structure of this genocide program?

Mr. PERLMAN. No; I would not say that. I call your attention to the fact that article 5 of this convention provides that the contracting parties undertake to enact, in accordance with their respective constitutions, the necessary legislation. The Congress would be the judge anyhow, under the convention as submitted to you, of what provisions were in accordance with the Constitution of the United States, and that provision makes that clear, that any legislation you might pass would be such legislation as in your judgment would be in accordance with the Constitution of the United States.

Senator HICKENLOOPER. Now let us go a step further. These may be questions that are unlikely to occur, but let us assume that the Congress passed legislation implementing this genocide convention and that that legislation was appealed to the Supreme Court and was taken to the Supreme Court, and the Supreme Court said that it was not in accordance with constitutional safeguards. Do you believe that any international group or court on appeal by some other nation might be able to disagree and overturn the ruling of our Supreme Court under the circumstances?

Mr. PERLMAN. No, sir. There is no possibility of any such happening as that. There is no provision in the convention that would enable anybody to even suggest such a thing.

NO SURRENDER OF SOVEREIGNTY

Senator HICKENLOOPER. But we are in effect, in this Genocide Convention, as we undoubtedly have done in treaties in the past, dealing with the question of a certain area of sovereignty of the United States which amounts to a surrender of a certain area of sovereignty.

Mr. PERLMAN. I do not understand that any sovereignty is being surrendered here at all. I do not know what you have in mind.

Senator HICKENLOOPER. If we submit the question of dispute as to the adequacy of our legislation to an international court, we surrender to that extent, do we not?

Mr. PERLMAN. No, sir. We only agree that the international court, on the complaint of another contracting party, can pass on the question as to whether or not we have fulfilled our obligation. We do agree that that method of determining the good faith of all of the contracting parties to this agreement can be pursued. That is all we agree to. If the international court, on a proper submission, should find either that this Nation or some other nation had not properly fulfilled its obligation, they would state that for what effect it would have on our Nation and on the other nation.

IF NATIONAL COURTS AND THE INTERNATIONAL COURTS DISAGREED ON THE ADEQUACY OF THE IMPLEMENTING LEGISLATION

Senator HICKENLOOPER. In case a dispute came up in which some nation questioned the adequacy of the legislation in the United States on that matter, and we were very firm in our opinion that the legislation was adequate as we had passed it, but the international court on

review said that it was inadequate and that we had not complied with our obligation under the convention, would we in fact be guilty if we still refused to change the legislation of moral disregard of the treaty? In other words, would the decision of the international court under those circumstances place us in a position where we had in fact, under the convention, violated its terms?

Mr. PERLMAN. I think it would follow, if the international court to which we subscribed, and jurisdiction over the issue, which we had helped to impose in that court, arrived at a decision, and we ignored the decision and remained where we were, that we would be subjected to whatever criticism that court made or the rest of the world made as a result of the decision.

Senator HICKENLOOPER. I understand we could be subjected to criticism. We can be subjected to criticism even though the court sustains our position.

Mr. PERLMAN. That is right.

Senator HICKENLOOPER. It is not a question of criticism that I am concerned with at the moment; it is a question of what would our position be as to whether or not we had violated the terms of the treaty when we were adamant in believing that we had complied sufficiently in our law and the court to which this was appealed, the international court, said "No you haven't," and we still say, "Well, in spite of what the court says, we believe that we have adequately complied."

IN CASE OF CONFLICTING INTERPRETATIONS WE MIGHT BE FOUND IN VIOLATION OF THE TREATY

Would we, not from our own viewpoint, because we have already under this question expressed ourselves as believing that it is adequate, but from the legalistic standpoint would we, in fact be in a position of having violated the treaty, regardless of our own opinion?

Mr. PERLMAN. I think we would. I think we would be in the same position that anybody is who is tried before any court and loses his case and still believes he is right.

Senator HICKENLOOPER. Yes; because he is subject to the jurisdiction of that court.

Mr. PERLMAN. Yes, sir; and we agree to subject ourselves.

WE ARE SUBJECTING OURSELVES TO THE COURT

Senator HICKENLOOPER. That is the point I am concerned about. Under this convention as it is proposed, we would be subjecting ourselves to the jurisdiction, whether it is a punitive jurisdiction or moral, and the decision of that international court, and regardless of what our opinion might be and how righteous we were in it in our own minds, our failure to conform to the findings of that court would place us in fact in a position of treaty violation.

Mr. PERLMAN. That's right.

Senator MCMAHON. Of course you pointed out that the court has no marshals, it has no deputy sheriffs, it can serve no writs.

Mr. PERLMAN. The Senator understands that.

Senator McMahon. I just wanted to emphasize that, because I wanted to point out that the moral obloquy would be the only thing that would come, but when you are dealing in the family of nations, the moral condemnation of all of them can be as strong as any combination of arms.

Mr. Perlman. Yes.

Senator Hickenlooper. I understand, Mr. Perlman. I am only trying to find out where we are and where we will be in this matter. I am not discussing the morals of this convention or the worthiness of the matter at all. I am trying to find out what the obligations are that we are assuming.

THE VALIDITY OF HYPOTHETICAL QUESTIONS

Mr. Perlman. I understand that. I only regret that you are interested in that, because, as I am going to point out, it really is not a substantial matter in this country. We are not going to have genocide. We are not going to be condemned by other nations. We are entering into this thing, if we do, in cooperation with other nations to stamp out something that may occur abroad, but which has never occurred here and never will occur here so long as we have our form of government. These hypothetical questions are interesting, but they are based on assumptions that really have no validity here.

Senator Hickenlooper. I am not so certain they do not have validity, Mr. Perlman. I am not so certain about the occurence of genocide in this country as I am concerned with what other nations may claim is genocide in this country, and I don't know what circumstances in the future other nations may raise against us, even though we know or feel morally that it is not covered at all. My questions concern themselves with what other nations may raise under certain future circumtances that we cannot foresee now.

Mr. Perlman. That, of course, and that same kind of objection, can be made with respect to any contract that we enter into.

Senator Hickenlooper. That is why we have a contract between individuals. Both individuals are going to carry out their given word, but you draw up a contract so there will not be any question about it.

Mr. Perlman. From what I know about it, and I did not participate in the negotiations for this convention on behalf of the State Department, I really do not think there is any misunderstanding among the contracting parties as to what is intended to be covered.

Senator Hickenlooper. That is all.

ONLY ONE STANDARD OF CONDUCT INVOLVED

Senator Pepper. Mr. Perlman, I am glad you answered as unequivocally as you did the questions put to you, so that the record would be clear that we are not proposing one standard of conduct for other nations and another standard of conduct for this Nation. In other words, if we violate this international agreement, then the International Court of Justice, upon the protest of any contracting party, would have jurisdiction to determine that we had violated the convention.

Mr. PERLMAN. That is right.

Senator PEPPER. And we would be in the same category as any other state that had violated it, subject to whatever action the appropriate agencies of the United Nations or the contracting parties might see fit to take upon the premise determined by the court that we had violated.

Mr. PERLMAN. Yes, sir.

Senator PEPPER. In other words, we cannot make it too clear that we are not proposing one rule for the United States and another for some other party or country when we enter into this agreement.

Now, if I understand correctly, article 1 reads:

> The contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

As Solicitor General of the United States, would you consider it a violation of the Government's undertaking under that article if the Government itself launched a program of genocide?

Mr. PERLMAN. Yes, sir.

Senator PEPPER. Now then, if it did so, that would be, would it not, a crime under international law, as defined by article 1?

Mr. PERLMAN. Yes, sir.

SCOPE OF THE INTERNATIONAL COURT

Senator PEPPER. Is it not a fact that under article 36, chapter 2 of the UN Charter, defining the competence of the International Court, the following appears:

> Article 36, Section 1. The jurisdiction of the court comprises all cases which the parties refer to it, and all matters specifically provided for in the Charter of the United Nations or in treaties and conventions in force.
>
> 2. The States parties to the present statute may at any time declare that they recognize as compulsory, ipso facto and without special agreement in relation to any other State accepting the same obligation, the jurisdiction of the court in all legal disputes concerning (a) the interpretation of a treaty; (b), any question of international law.

So a protest alleging a violation of this convention would raise the question as to whether there had been a breach of international law, and therefore would come within the competence of the International Court.

Mr. PERLMAN. Yes, sir.

Senator PEPPER. And have we not already, by the action of Congress in the Connally-Vandenberg or Vandenberg-Connally resolution, agreed to the compulsory jurisdiction of the International Court on questions involving the interpretation of a treaty and questions of international law?

Mr. PERLMAN. That is my understanding.

THE DUAL PURPOSE OF THE CONVENTION

I might say this here, because I think it ought to be called to the attention of the committee. While the convention, in the provision that the Senator has just read, article 1, states that the contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law, genocide has

not been punishable through international agreement if committed in time of peace. That question was submitted, I believe, to the international tribunal that was set up in Nuremberg. I think it was also passed upon in the tribunal set up in Tokyo, and it was felt that prior custom among the nations did not warrant a finding that genocide committed in time of peace was punishable as an international crime, and therefore those who were placed on trial before those tribunals in which we played a part were charged with the commission of this crime in time of war. What had happened before the war was declared was not considered within the purview of the court.

Senator PEPPER. So that this convention has at least a dual purpose. One, it might be said that it codifies the development of international law which occurred through the Nuremberg trials in the form of a convention; and secondly, it clearly establishes by substantive conventional declaration that genocide in peacetime is a breach of international law and an international crime.

Mr. PERLMAN. That is exactly it, Senator. The ratification by the 20 contracting parties that puts it into effect will put beyond dispute in the future the question as to whether genocide committed in time of peace is punishable.

Senator LODGE. Mr. Chairman.

Senator MCMAHON. Senator Lodge.

INTERNATIONAL CRIMES

Senator LODGE. What are some other international crimes?

Mr. PERLMAN. We have had some treaties on some of them. Piracy is one of them. I do not know whether you are referring to old crimes or those that were dealt with in these discussions.

Senator LODGE. Crimes dealt with similarly to the way in which it is contemplated to set up genocide as a crime.

Mr. PERLMAN. A list of offenses was contained in the Charter of the Nuremberg Tribunals and also in the charter that set up the International Court in Tokyo that was subscribed to by 11 nations. They were crimes against peace, crimes against humanity, and what are called the conventional war crimes. They are crimes that are set out in The Hague and other conventions to which this country is a party, which, among other things, provide for the treatment of prisoners of war and the treatment of civilian populations by invading armies, and the like. There are a great number of matters that are covered by what are known as conventional war crimes and crimes against peace and crimes against humanity that were more specifically defined in those charters that were set up since the end of World War II.

Senator LODGE. I was not thinking so much of war crimes. I am familiar with the Geneva Convention and the rules of land warfare and treatment of prisoners and those things. This genocide thing, of course, is not solely a war crime; it is also a peace crime.

Mr. PERLMAN. That is right.

Senator LODGE. How many other peace crimes are there?

Mr. PERLMAN. There are a few of them that are set out in the historical survey of the question of international criminal jurisdiction. There is the slave trade, traffic in narcotics, traffic in women and children, the dissemination of obscene publications, the counterfeiting of

currency and the injury of submarine cables. Those are set out as some of them.

EFFECTIVENESS OF ENFORCEMENT MEASURES AGAINST INTERNATIONAL CRIMES

Senator LODGE. What has the general history been of law enforcement against those kinds? Has it been efficient? Has there been frequent recourse to enforcement procedures?

Mr. PERLMAN. I think the State Department would know better than I would as to whether or not they have had to have many prosecutions under them.

Senator LODGE. I was just wondering whether in general the international crime had proven itself to be an impractical devise.

COUNTERFEITING NOT PRECISELY COMPARABLE

Mr. FISHER. Senator, may I answer that from the State Department? You might want to refer to the case of the *United States* v. *Arjona*, which refers to the problem of counterfeiting of foreign currencies and foreign bank notes. That has in practice proved an effective way, within the limits of any law enforcement machinery, of permitting this country to live up to its obligations with respect to others, to prevent people in this country from ruining their currency. It has apparently worked with some effect.

Senator LODGE. Let's take that as an example of international crime where enforcement has been relatively efficient.

Mr. FISHER. We have the opium crime as well, and there are cases cited in the various briefs dealing with action.

Senator LODGE. In the case of counterfeiting, what agency was it that enforced the law and brought the guilty parties to justice?

Mr. FISHER. That was quite a while back. I assume it would be a combination of our Treasury people and our Department of Justice. The actual enforcement would be by the United States attorney and the Department of Justice in the district court of the United States.

Senator LODGE. They did not appear before any international tribunal?

Mr. PERLMAN. No. That is another example of where we agreed in the treaty to pass legislation.

Mr. FISHER. That was a gradual development of the practice of the law of nations.

Senator LODGE. What I was trying to find out was about international crimes set up precisely as this was set up. Counterfeiting is not, then, on a comparable basis?

Mr. FISHER. Not precisely comparable, but the sources of custom and convention as the two primary sources of international law, custom works pretty well. There is no question but that the Colombian Government would have a reason for coming to us and saying "Something is happening in violation of your obligation, based on international custom, which has become an obligation under the law of nations. Please do something about it."

We would go to the Department of Justice and say "There is a United States statute on this thing. Prosecute under that statute if

we are to live up to our obligations as a self-respecting member of the family of nations. Please take a look at it."

They would take a look at it and bring action in the District Court of the United States under a Federal statute, subject to all the constitutional safeguards of any other prosecution and with appeal to the Supreme Court of the United States.

COMPARABLE INTERNATIONAL CRIMES

Senator LODGE. I am not trying to harass anybody. It seems to me it is pertinent to this discussion for this committee to have a list of the international crimes that are set up as such by a method similar or identical with the method contemplated here. It seems to me that is a pertinent thing for us to know. That is all I am trying to get. I do not think I have had an answer to my question yet.

Mr. FISHER. I cannot promise the list to be exhaustive, but I would say the principal ones are the ones mentioned in Mr. Rusk's statement, which relate to submarine cables; pelagic sealing, the killing of seals under certain circumstances; the slave trade. Those are the only three that I know of that are precisely the same.

Senator LODGE. That is exactly what I wanted to know.

Mr. FISHER. That list may not be completely exhaustive. Those are the three that come to mind.

Senator LODGE. What has been the history of enforcement in the cases of those three crimes?

Mr. FISHER. I do not and could not give you a detailed list of the number of cases that have been brought, sir. tI has not been in any way a source of difficulty, either internally or as part of our foreign relations.

Senator LODGE. The device of making those actions international crimes in the way it has been contemplated here has been, on the whole, a satisfactory and efficient way of dealing with it?

Mr. FISHER. Yes, sir.

Mr. PERLMAN. Senator, if you take page 15 of my statement, you will see a long list of treaties which are of the character you have been inquiring about. They are not segregated as to those which resulted in the passage of legislation by Congress for the enforcement, but in the text I refer you to a note where some of them are identified.

Senator LODGE. I was trying to establish whether this Genocide Convention was going to work out more or less as a gesture and as an expression of sentiment, or whether it really has some teeth in it and really was a practical device for getting something accomplished. That is what I was trying to get at.

Mr. PERLMAN. I think we answered that. We try to later on in the statement that I am reading.

INDIVIDUAL RESPONSIBILITY BEFORE INTERNATIONAL COURTS

Senator HICKENLOOPER. I would just like to ask whether there are in any of these international crimes, and perhaps Mr. Fisher knows, such as the cable situation and the sealing and the slave trade, records that any violations have been tried in any international court, or have they been tried in the courts of the country that picked them up, for instance?

Mr. FISHER. Under the conventions that we now have there have been no cases tried involving individual responsibility in international courts.

Senator HICKENLOOPER. With the exception of the Nurenberg trials.

Mr. FISHER. The specific conventions that I referred to in answer to Senator Lodge's question did not, of course, include the Nurenberg tribunal. I cannot answer as to whether or not there have been any diplomatic discussions in terms of obligations or completely living up to the obligations.

METHOD OF ENFORCEMENT

Senator HICKENLOOPER. In the case of a person arrested for piracy, he is tried in the courts and under the laws of the individual nation, is he not?

Mr. PERLMAN. That is right.

Senator HICKENLOOPER. If an American warship picks him up, he will be tried in an American court under United States statutes against piracy. The same with the Cable Convention violation?

Mr. PERLMAN. That is true of all of them.

Senator HICKENLOOPER. And, of course, it is contemplated under this convention that any violator of the genocide laws that we might adopt would be tried under our law, within United States jurisdiction.

Mr. PERLMAN. Right under the laws and in the courts of the state where the crime was committed.

NO FORUM WHERE THE STATE COMMITS GENOCIDE

Senator HICKENLOOPER. Now then, getting back to this old question of supposing the state itself undertakes to commit genocide, there is no forum contemplated under this convention, and at the moment there is no machinery set up, to try that state, is there?

Mr. PERLMAN. That is right, except the provision you and I were discussing before, which enables a state to refer to the International Court of Justice the question of fulfillment of obligations and the general condemnation that might flow from an adverse finding.

Senator HICKENLOOPER. But an individual or group of individuals within a state that violated the antigenocide laws could be physically punished by that state under its laws; but a nation that committed genocide as a national policy or a governmental policy, such as the Nazis used, would not be subject to physical punishment except the moral condemnation which they would get as a result of the decision of an international court or a group on appeal.

Mr. PERLMAN. I do not think that is entirely accurate, Senator, for this reason: The states probably, through the United Nations or by agreement among themselves, might impose economic or other sanctions if they felt that that was the advisable thing to do.

Mr. FISHER. I would like to add one thing to Senator Lodge's question, in that by restricting it to the particular international crime created by these conventions I did not want to give the impression that there are no international crimes recognized by the general law of nations in which we have exclusive right to have an American citizen tried in an American court. Piracy is an example. That is a generally recognized law. If an American citizen is engaged in piracy

and captured by a British man-of-war off the coast of Sierra Leone, he would be tried there. Also under a previous convention relating to slavery people were tried by mixed courts, but I was referring to the situation which now exists and the situation which exists under this genocide convention, which makes it clear that it will be tried by a court in the country where the offense is alleged to have been committed and that, subject to the constitutional processes of these courts, such trial will be held.

ONLY ONE ALTERNATIVE

You might want to read the section of the convention dealing with that, Senator Lodge, which does make it clear that that is the situation. There is a reference made to the possibility at some later period of their being an international——

Senator LODGE. Where are you reading?

Mr. FISHER. Article 6 on page 8 of the paper you have in front of you.

Senator LODGE. There are two alternatives there.

Mr. PEARLMAN. No, sir; there is only one alternative. The second alternative, the International Tribunal, is a matter of jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction. There is no such tribunal in effect, and we have not accepted any such jurisdiction.

Senator LODGE. There might be some time.

Mr. FISHER. That is the traditional story of the man who could have ham and eggs for breakfast if he had both ham and eggs, because they aren't in effect. That takes subsequent action by the President, confirmed by the Senate. That is not before us.

Senator LODGE. In the last 20 years has there been anybody tried for the violation of the slave trade?

Mr. PERLMAN. Not to my knowledge.

Senator LODGE. In the past 20 years has anybody been tried for violation of the treaty with regard to pelagic seals?

Mr. PERLMAN. I will have to check that.

(Subsequently the State Department reported:)

The Fish and Wildlife Service of the Department of the Interior, which has kept annual records on the execution of the convention, has informed UF/W that there has never been any violation of the convention which resulted in the invoking of the provisions of article I thereof. They also report that, since the termination of the convention, nationals of the USSR, as well as of the other countries formerly parties, have apparently continued to comply with the provisions of the convention although the convention is no longer in force.

The only cases which have ever arisen in connection with possible violation of the convention were two in this country concerned with the intended use of outboard motors by the Eskimos, a practice which would have been contrary to the provisions of article IV of the convention.

There is another convention which, while I do not believe it deals directly with enforcement by criminal practices, does deal with the obligation to stamp out the opium trade, and there have been litigations in the courts of the United States, not prosecutions, but protests from seizure of the opium poppy which were based on that convention, and I think we can report that that convention, on the whole, has proved a satisfactory method of stamping out an international crime.

Senator LODGE. But as a practical matter, if there have been no violations of these three conventions in the last 20 years, or at least none that were conspicuous enough for you to remember them, one must come to the conclusion that there has been no modern experience in enforcing international crime of this type.

Mr. PERLMAN. I hope there will be none in this one.

Senator LODGE. I hope so, too, and I also hope, if there is a violation, there will be an effective and efficient machinery for dealing with it.

Mr. PERLMAN. Senator, it might be well to observe in that connection that maybe the very existence of punitive legislation has deterred people who might otherwise have been tempted to engage in the practices which those acts condemn.

Senator LODGE. Of course that is the best kind of law in the world. If the law is that good, it is practically perfect.

Mr. PERLMAN. That certainly is one of the main motives for submitting a convention of this kind to this body. It is not done, really, with the idea that punishment will be inflicted and will be inflicted frequently. It is done in the hope that it will never be necessary to enforce the penal provisions that may be enacted by the Congress or other legislative bodies.

Senator LODGE. I hope it has that effect.

Mr. PERLMAN. Now may I call the committee's attention to the following:

The relationship of state jurisdiction in criminal jurisprudence to the genocide convention

The passage from the case of *Geofroy* v. *Riggs*, which speaks of restraints arising from the nature of the Government and the States, and restraint against change in the character of the Government or in that of one of the States, is used as another argument for the existence of a constitutional limitation on the treaty power.[34] It is argued against the convention as a whole that to impose a new body of treaty law which will become the domestic law of the United States is a change in the structure of the relation of the States and the Federal Government, and that to deprive the States of a field of criminal jurisprudence and place it in the Federal jurisdiction by treaty would be so revolutionary as to be in violation of the Constitution.

If there were matters of criminal jurisdiction confided to the States so vital to their existence that a change by the Genocide Convention would destroy our dual system of government, conceivably the problem suggested might be more than hypothesis. The fact is quite the opposite. Congress is already invested by the Constitution with the power to provide the criminal sanctions for offenses against the law of nations, Constitution, article I, section 8, clause 10. It has had that power since 1789, and the States expressly committed that field of criminal jurisprudence to the Federal Government. It is therefore of little or no consequence in comparing the effect of the exercise of Federal criminal jurisdiction upon residual State criminal jurisdiction that Congress may exercise its power to punish genocide pursuant to the authority provided in article I, section 8, clause 10, of the Constitution, or pursuant to the authority of a treaty and article I, section 8, clause 18 (the necessary and proper clause) of the Constitution, or

[34] 133 U. S. at 267, passage quoted in text under heading "The Question of Constitutional Limitations on the Treaty Power."

pursuant to both sources of power. It is wholly unwarranted to say that, because another offense has been added to the list of the few now punishable as offenses against the law of nations, the States have been deprived of a field of criminal jurisprudence. This area of the field they never possessed, and as Madison observed in the Federalist (No. 42):

> The power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations, belong * * * to the general Government, and is still a greater improvement on the Articles of Confederation.

In the Curtiss-Wright case the Supreme Court said:

> The States severally never possessed international powers—[35]

And in *United States* v. *Arjona*,[36] it said:

> Congress has the power to make all laws which shall be necessary and proper to carry into execution the powers vested by the Constitution in the Government of the United States, art. I, sec. 8, clause 18; and the Government of the United States has been vested exclusively with the power of representing the Nation in all its intercourse with foreign countries. It alone can "regulate commerce with foreign nations," art. I, sec. 8, clause 3; make treaties and appoint ambassadors and other public ministers and consuls, art. II, sec. 2, clause 2. A State is expressly prohibited from entering into any "treaty, alliance, or confederation," art. I, sec. 10, clause 1. Thus all official intercourse between a State and foreign nations is prevented, and exclusive authority for that purpose given to the United States. The National Government is in this way made responsible to foreign nations for all violations by the United States of their international obligations, and, because of this, Congress is expressly authorized "to define and punish * * * offenses against the law of nations," art. I, sec. 8, clause 10.

The Genocide Convention in no wise disturbs the jurisdiction of the States to deal with murder, assault, and the host of common law or statutory penal offenses. As a matter of fact, in the Arjona case, supra, which dealt with counterfeiting the securities of other governments and foreign banks as offenses against the law of nations, punishable under Federal law, the Court was of the view that punishment of identical offenses under State law was not necessarily excluded.[37]

But it would indeed be strange doctrine to find today, after 160 years of constitutional development, that the Federal Government may not exercise a delegated power—in this case the treaty power and all else in the Constitution that goes with it—because it will be defining a crime hitherto not punishable by Federal law or Federal courts, or, even though the assumption is not warranted here, because it may intrude upon what was solely regulated by State authority. No thesis has been more firmly resisted by the Supreme Court than this, beginning, in treaty cases, in 1796 with *Ware* v. *Hylton*,[38] followed to modern times in a long line of decisions—some of which, with *Ware* v. *Hylton*, have been set out and discussed under the heading "The Treaty Power"—and receiving most clear expression in *Missouri* v. *Holland*,[39] where criminal jurisdiction was an issue.

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[35] 299 U. S. 304, 316.
[36] 120 U. S. 479, 483 (1887).
[37] 120 U. S. at 487.
[38] 3 Dall. 199, supra.
[39] 252 U. S. 416 (1920).

FEDERAL REGULATION OF MATTERS ORIGINALLY WITHIN STATE JURISDICTION

Wholly apart from treaty power and pursuant to other expressed or implied powers, Congress over the years has regulated scores of subjects, with criminal as well as civil sanctions, which prior to Federal entrance into the field were the subjects of State regulation. We have grown accustomed to Federal legislation governing railroads, motor busses, aviation, food and drugs, white-slave traffic, kidnapping, labor relations, and these are but a few examples of the unavoidably expanded Federal jurisdiction and a somewhat corresponding Federal criminal jurisdiction resulting from the demands of modern society. This is hardly revolution, though it may be evolution which some may deplore.

It is not necessary to discover or define the limits of Federal power in order to judge the legality of an act of that power. In the case of the treaty power, the Supreme Court has never defined the limits. It has merely intimated that some may exist. Clearly, with regard to the Genocide Convention, the existence of a general criminal jurisdiction in the States is no bar to the exercise of the treaty power. In any event, there is no clash of jurisdiction here where the Federal Government is exercising its power—to punish offenses against the laws of nations—expressly delegated to it.

Senator PEPPER. At the present time, these other offenses that are referred to are prosecutable by act of Congress in the Federal courts?

Mr. PERLMAN. Yes, sir. Its jurisdiction has been vested in the Federal Government, although, as we point out in our statement, in the case that dealt with counterfeiting, I think the Supreme Court was careful to point out in that opinion that that fact did not necessarily exclude Sate jurisdiction over the same kind of offenses.

CLARIFICATION OF THE DEFINITION OF GENOCIDE

Senator PEPPER. Mr. Perlman, you have mentioned the matter of domestic jurisdiction being affected. May I just clarify this question for the record, because I dare say the critics of this convention, if there unhappily are any, might raise the question about whether or not we would be surrendering to a Federal tribunal or possibly subsequently to an international tribunal, or now to the International Court of Justice, the right to consider something which is anything less than the full crime of genocide as defined in this convention. The crime, as I read article 2, is defined as follows:

> In the present convention, genocide means any of the following acts committed with intent to destroy in whole or in part a national, ethnical, racial, or religious group as such.

Then, referring to specific acts, acts committed with that expressed intent, that is, the desire to destroy, in whole or in part, to wipe out in whole or in part, a national, ethnical, racial, or religious group.

NOT APPLICABLE TO INTERGROUP STRIFE

What I wanted to raise was this question: If one group of people in this country got angry with another group of people and they had physical strife and violence and somebody got hurt, that kind of case would not be genocide within the definition of article 2, would it?

Mr. PERLMAN. It would not.

NOT APPLICABLE TO RELIGIOUS STRIFE

Senator PEPPER. If the Catholics and the Protestants got into a conflict of some sort, and in a given community either the Protestants stormed the Catholic Church and they had a riot, or in a Catholic community the Catholics made an attack upon the Protestant Church, that would not be genocide within the definition of this convention, would it?

Mr. PERLMAN. It would not.

NOT APPLICABLE TO RIOT AND RESULTANT VIOLENCE

Senator PEPPER. Or if in some part of the country a group of people became angered with a Chinese, or two or three Chinese, who had committed some crime and there was a sort of riot and violence in that community between some people that were offended or affected by the act of violence and the Chinese that were charged with it, that would not be genocide?

Mr. PERLMAN. It would not.

NOT APPLICABLE TO LYNCHING

Senator PEPPER. Or if there were to be what is commonly called a lynching, obnoxious as it is and infamous as it is, that might occur in the United States, that would not be genocide within the definition of article 2 of this convention?

Mr. PERLMAN. It would not.

Senator PEPPER. That would still remain the same sort of crime that it is under the law of this land, whatever that law is?

Mr. PERLMAN. That is right.

Senator PEPPER. And there would be no possible basis of anybody claiming that that was a matter of international concern and what is being proposed here is to give an international tribunal jurisdiction over that or those other offenses as I have described them?

Mr. PERLMAN. That is exactly right.

Senator PEPPER. I wanted the record to be clear on that, so we would not be faced with that in our questioning.

Mr. PERLMAN. I think we deal with that in our statement. I am glad to have it in the form in which you have put it.

In our statement we set forth the cases that answer the argument that anything in this convention contemplates an interference by the Federal Government with State jurisdiction, or commits either to Federal jurisdiction or international law things with which the several States of the Union have to deal. We show here that that is not the situation either in fact or in law. As a matter of fact, the States have not undertaken to attempt to punish crimes against the law of nations. If they have such authority they never have exercised it or attempted to exercise it. On the contrary, the courts have held that those matters have been committed to the Federal Government and not to State governments.

INTERNATIONAL COURT EXCLUDED FROM ESSENTIALLY DOMESTIC MATTERS

Senator PEPPER. Is it not also a fact that by its own limitations the jurisdiction of the International Court of Justice is excluded from matters which are essentially domestic in character?

Mr. PERLMAN. That is correct, and that, of course, occurs in the Charter of the United Nations and, as we have already pointed out in the part of the statement I have read, there is no attempt in this convention that is before you now to add to the authority or give the United Nations authority which it does not already possess. That is clear.

There are other objections that have been made by people antagonistic to the adoption of this convention. One argument is made that the convention violates the provisions of article I of the Bill of Rights.

The first amendment and incitement to genocide

Another objection based upon the Constitution is directed not to the convention as a whole but to the provision in article III (c) which declares that "direct and public incitement to commit genocide" shall be a punishable act. It is urged that to make such conduct a criminal offense would be an infringement of freedom of speech and freedom of the press under the first amendment to the Constitution.

It is assumed that the argument is leveled at the power of Congress to make incitement to genocide a criminal offense, since the first amendment to the Constitution provides that—

> Congress shall make no law * * * abridging the freedom of speech, or of the press. * * *

Our courts have been most solicitous in guarding against governmental encroachments upon freedom of speech and have protected it—

> against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that arises far above public inconvenience, annoyance, or unrest.[40]

It is this protection which is sought to be invoked in pleading for freedom to incite directly and publicly to commit genocide. The plea completely overlooks the obvious limitation upon the absolute freedom of speech which is both a part of the very statement of the "clear and present danger" doctrine and its practical application in the past.

This famous doctrine had its inception in a group of Supreme Court opinions, written by Mr. Justice Holmes, which affirmed convictions—for conspiracy to violate the Espionage Act by attempting to cause insubordination in the armed services and obstructing recruitment—based upon the utterance of words of persuasion which were regarded of such a nature, and used in such circumstances, as to create a clear and present danger of bringing about the substantive evil that Congress had a right to prevent.[41] What was said in the Frohwerk case is especially pertinent to the Genocide Convention and incitement to commit genocide:

> * * * [We think it necessary to add to what has been said in *Schenck* v. *United States* (249 U. S. 47) that the first amendment, while prohibiting legislation against free speech as such, cannot have been, and obviously was not intended to give immunity for every possible use of language (*Robertson* v. *Baldwin* (165 U. S. 275, 281). We venture to believe that neither Hamilton nor Madison, nor any other competent person then or later, ever supposed that to

[40] *Terminiello* v. *Chicago* (337 U. S. 1, 4 (1949)); *Bridges* v. *California* (314 U. S. 252, 262–263 (1941)).

[41] *Schenck* v. *United States* (249 U. S. 47, 52 (1949)); *Frohwerk* v. *United States* (249 U. S. 204 (1919)); *Debs* v. *United States* (249 U. S. 211 (1919)); and see also *Abrams* v. *United States* (250 U. S. 616 (1919)).

make criminal the counseling of a murder within the jurisdiction of Congress would be an unconstitutional interference with free speech.[42]

In *Fox* v. *Washington*,[43] also an opinion by Mr. Justice Holmes, the Supreme Court upheld a statute of the State of Washington which, among other things, made punishable—

encouraging or inciting or having a tendency to encourage or incite the commission of any crime, breach of the peace—

and so forth, and a conviction thereunder for printing an article which the Court said—

encourages and incites a persistence in what we must assume would be a breach of the State laws against indecent exposure. Further—

said the Court—

we understand the State court by implication at least to have read the statute as confined to encouraging an actual breach of law. Therefore the argument that this act is both an unjustifiable restriction of liberty and too vague for a criminal law must fail.[44]

This case was cited with approval in *Giboney* v. *Empire Storage Co.* (336 U. S. 490 (1949)); and *Chaplinsky* v. *New Hampshire* (315 U. S. 568, 574 (1942)).

The Giboney case [45] is a recent expression of the Supreme Court that incitement to commit crime enjoys no immunity under, and draws no protection from, the first and fourteenth amendments. In that case the Court held that peaceful picketing, with use of placards, and so forth, to induce violation of a State anti-trade-restraint law (a criminal statute) could be enjoined. Said the Court:

It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now.[46]

and again:

But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. (See e. g., *Fox* v. *Washington*, 236 U. S. 273, 277; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568.) Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.[47]

There are of course shades and degrees of speech which give rise to troublesome legislative and judicial problems in determining a line between permissible and reprehensible conduct. But in discussing these situations it has always been well understood that incitement to commit crime is not among the problem cases. For example, Mr. Justice Brandeis in his concurring opinion in *Whitney* v. *California* [48] had this to say:

But even advocacy of violation, however reprehensible morally, is not justification for denying free speech where advocacy falls short of incitement and there is nothing to indicate the advocacy would be immediately acted on. The wide divergence between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind.[49]

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[42] 249 U. S. at 206.
[43] 236 U. S. 273 (1915).
[44] 236 U. S. at 277.
[45] 336 U. S. 490 (1949).
[46] 336 U. S. at 498.
[47] 336 U. S. at 502.
[48] 274 U. S. 357 (1927).
[49] 274 U. S. at 376.

See also *Musser* v. *Utah*,[50] dissent of Mr. Justice Rutledge, who in the course of urging a stronger condemnation of legislation which may restrict free speech said:

> At the very least the line must be drawn between advocacy and incitement—

and again—

> or we might permit advocacy of law breaking, but only so long as the advocacy falls short of incitement.

In the light of these well understood concepts, there is no constitutional barrier to a provision by Congress for the punishment of direct and public incitement to commit the crime of genocide.

ONLY OPPOSITION FROM THE AMERICAN BAR ASSOCIATION

Senator McMAHON. Who, Mr. Perlman, are the opponents of the treaty? As you have dealt with this matter and have made a study of it, who has opposed it?

Mr. PERLMAN. The only objections that I have had any real contact with are those that have been made by certain members and one committee of the American Bar Association, the Committee on Peace and Law Through the United Nations.

I would like to tell this committee that that committee is a committee of nine appointed by the president of the American Bar Association. Unfortunately that committee has deemed it advisable to conduct a campaign against this convention throughout the United States. It has called meetings in different parts of the country and has indicated that those meetings were for education and discussion, whereas as a matter of fact they have been conducted in a way that would be antagonistic to the purposes of this convention and to those who are interested in having it ratified.

ACTION OF THE COMMITTEE ON PEACE AND LAW THROUGH THE UNITED NATIONS

The committee made an adverse report, this committee of nine, to the last meeting of the house of delegates of the American Bar Association. I attended that meeting. At the same meeting there was a favorable report made by the section on international and comparative law of the American Bar Association. This committee should know that the propaganda against ratification has been conducted by a committee of nine members. The membership of the section on international and comparative law is approximately a thousand, and that 1,000 has recommended to this body, with some reservations, the ratification of this convention.

I think it is fair to say, and I think you will be told, if any of the members of the section are permitted to make a statement here, that even the reservations that they have suggested were adopted by the section in the hope of mollifying those who were seeking to defeat the whole proposition before the American Bar Association, and do not actually represent what might be thought to be a need, a pressing need, for such reservations. It was an attempt to arrive at something that would answer the objections that had been made.

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[50] 338 U. S. 95, 101, 102 (1948).

A COMPROMISE RESOLUTION ADOPTED

Now, what happened at the American Bar Association was that there was a compromise resolution adopted under which both reports, I think, were sent here. The resolution that was adopted, while it gave lip service to the feeling that something should be done about this crime of genocide, undertook to object to the convention as submitted, but without submitting any plan that would be acceptable; and along with that objection to the convention as submitted came the report—I suppose it is before you; I have a copy of it, and I will be very glad to leave it with the committee—which represents the views of certainly a majority of the thousand members in the section on international law.

BAR ASSOCIATION NOT IN AGREEMENT ON THE CONVENTION

I have been informed this week that the president of the American Bar Association sent a telegram to certain members who inquired as to whether or not they could speak here with the authority of the American Bar Association saying that the views of the board of governors of the American Bar Association on that had been polled, and that the committee of nine, or its representatives, were authorized to speak, but not the officers of the section which represents more than a thousand members, or approximately a thousand members, of the American Bar Association.

These constitutional objections, or so-called constitutional objections, the ones that we have dealt with in the statement that is filed here on behalf of the Department of Justice, have emanated from this committee of the American Bar Association, the committee of nine, and so far as I know from no other source in this country.

I have a conclusion here, parts of which I would like to read.

Conclusion

I have attempted to analyze, in this statement, arguments on constitutional questions which have been made by those who are most critical of the efforts of this Government to cooperate in contributing to the growth of international law and order. I have tried to indicate that the conjuring up of objections on constitutional grounds is no more than the parading of theories long since rejected in the development of our constitutional processes. What is before the Senate is essentially the expression of American policy, through its advice to the President, in this important matter.

For centuries, men have argued the relative merits of formalizing human-rights doctrines into written instruments. We are concerned here with placing one such elementary doctrine into a treaty to become part of international law. Americans, with their experience under a written Constitution and Bill of Rights, should be the last to discount the significance of such a proposal. The case has been succinctly stated this way:

> A leap from the premise that since some treaties have been regarded as mere "scraps of paper" to the conclusion that any principle, enshrined in great state papers or constitutional documents, must be futile and without effects on the world-power process, involves a very considerable underestimation of the role that authoritatively formulated principle can be made to play in the affairs of men.

A similar fallacy underlies the repeated suggestion that human rights stem from some source higher than government and that not only can government do little to secure them but also any effort by government to secure them is likely to endanger them. To recognize that devotion to human rights has many justifications—religious, natural law, and other—rooted deep in man's nature, it is not necessary to ignore that such rights often get scant protection in fact if they do not have government or centralized community coercion behind them. One wonders whether the opponents of the United Nations program regard the Bill of Rights provisions in our own Constitution as superfluous and why, in contradiction of their premises, they shudder for the fate of any rights that may be omitted from the United Nations program. Men have always sought to secure their rights by that formulation of principle and balancing of power which we call government; the alternative to government is anarchy and rule by private violence. To fail to distinguish the moral justifications for rights from the realities of the power necessary to protect them is simple, and perhaps suicidal, intellectual confusion.[51]

GENOCIDE HAS NEVER EXISTED, NOR CAN IT EVER EXIST IN THIS COUNTRY

Genocide has never existed in this country. Under our form of government, it can never exist. Our Constitution and our Bill of Rights contain guarantees of the status and rights of minorities which make anything approaching genocide impossible. The sly and unworthy effort to make it appear, in some discussions of the subject, that the convention can be used to intervene in the handling of purely domestic problems, and to usurp the functions of Congress or the States in such matters, is without any basis.

Senator PEPPER. Good.

Mr. PERLMAN. This convention, if ratified, will be our pledge to cooperate with other nations in pronouncing genocide an international crime, and in providing for the punishment of those who may defy and violate the law.

The members of this committee have been given the opportunity, by the submission of the Genocide Convention, to recommend to the Senate action that will gladden the hearts of freedom-loving peoples everywhere in the world. Ratification will afford a measure of protection for those unfortunates who still live in fear of torture and death at the hands of cruel ruthless rulers or dictators who are or may become obsessed with the idea either that they belong to a master race, or that they are apostles of a master ideology, dedicated to the extermination of other races and creeds.

The Convention on Genocide is notice to the world that commission of that crime will result in punishment of the criminals, and that the civilized nations will take action to make that punishment certain and severe.

We can hope and we can pray that mass destruction of innocent human beings for racial or religious reasons will never again occur, but Hitler's death chambers are too recent to allow us to forget and ignore the lessons taught by mass cremations and mass graves. Our duty to our country and to all of humanity forbids us to do anything less than has been written into the Convention on the Prevention and Funishment of the Crime of Genocide.

Senator PEPPER. That is an excellent statement, Mr. Perlman.

Senator MCMAHON. Thank you very much.

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[51] McDougal and Leighton, the Rights of Man in the World Community, 14 Law and Contemporary Problems, 490, 531, fn. 257 (1949).

The next witness will be Judge Robert P. Patterson. He comes representing the United States Committee for the United Nations Genocide Convention.

STATEMENT OF ROBERT P. PATTERSON, UNITED STATES COMMITTEE FOR THE UNITED NATIONS GENOCIDE CONVENTION

Mr. PATTERSON. Mr. Chairman and gentlemen, may I say a word of appreciation for the hospitality I have always received in this House at the hands of you whom I shall always regard as my friends?

Senator PEPPER. Let us take occasion to commend you for the services you rendered your country, Mr. Secretary.

Mr. PATTERSON. Thank you, Senator Pepper.

I hasten to reassure the committee against fears it might have on seeing the voluminous material I have here. Please put it down to a lawyer's habit to take along all kinds of material. Part of it, also, is for the members of the committee.

EXHIBITS EXPLAINED

I appear as spokesman for the United States Committee for a United Nations Genocide Convention, and this is material that the committee wishes to submit to the Senate Committee on Foreign Relations. I have five sets, one for each member.

The material I have just handed you comprises a statement by the United States committee, for whom I appear; also our brief on the points of law that may be involved, and also letters indicating strong and vigorous support of the Genocide Convention by a list of organizations of United States citizens, that I submit would be at the top of the list in anyone's selection of leading organizations in labor, religion, law, veterans' groups, and similar organizations, all of them urging ratification.

I trust that the material may be of assistance to the committee in its deliberations on this subject.

URGE RATIFICATION

Our position I may state in a single sentence: Our position is that the Genocide Convention should be ratified by the Senate of the United States, and ratified without reservations. Very briefly, the grounds for that position are these: That the mass destruction of human beings according to groups on lines of nationality, race, or religion has been an abominable evil, an evil that has shocked the conscience of mankind. That it is of grave international concern because it is the concomitant of aggression against other nations; because it arouses the most deep-seated resentment in members of the group that is persecuted; and because it causes wholesale dislocations of people and the problem of caring for those people by neighboring states. That it calls for collective action by the family of nations. And that it calls for leadership, moral leadership, on the part of the United States.

Our further grounds are that the objections of a legalistic character that have been leveled against the convention have no substance, are completely evanescent, and cannot bear the light of analysis; and fi-

nally, that no reservations are called for, required, or in any way necessary.

If I may, I will make an oral statement rather than follow the lines of the brief. The brief consists of some 28 pages. I am sure that it will not be of any assistance to the committee to have me drone over the pages of that brief. The brief has some appendices in it. The third appendix is a text of the Genocide Convention. Of course you have that in other material, but for your convenience, we thought it best to put in the brief the convention, too.

Senator McMAHON. The brief, of course, will be printed in the record and made part of the record.

(Brief inserted after Judge Patterson's testimony after p. 62 of this record.)

ASSEMBLY RESOLUTION

Mr. PATTERSON. What is this case, and how did it get here?

In 1946 the General Assembly of the United Nations declared that mass destruction of people by groups was of international concern, and that genocide was an international crime. It made that declaration by unanimous vote. And 2 years later the General Assembly of the United Nations adopted this convention that is before the Senate for ratification now.

May I say that there, too, the vote was unanimous. Fifty-five nations voted in the affirmative, none in the negative, not a single one even abstained from voting. A truly remarkable record in the United Nations.

And one other thing regarding that passage of the convention in the United Nations. Passage was due to strong leadership by this Nation, the United States, by Secretary Marshall, Mr. Austin, Mr. Dulles, and our other representatives there.

The text of the convention, as I said a moment ago, appears in the appendix to our brief. There are 19 articles in it. All of them have their importance, but I mention four leading features that I think bear closely upon the consideration the committee will give to this paper.

First, genocide is declared to be a crime under international law. That is article 1.

Second, the definition of genocide in article 2, a careful definition showing carefully phrased words, defined to mean any of the following acts (and this is important) committed with intent to destroy in whole or in part a national, ethnical, racial, or religious group as such. And then follow five acts: Killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction, imposing measures intended to prevent births, and forcible transfer of children of the group to another group.

The third leading feature that I will mention is in article 5, the engagement of this country. The engagement of this country, in a word, is to enact legislation in accordance with our Constitution to carry into effect the provisions of the treaty or convention and to provide penalties, suitable penalties. That is in article 5.

Fourth in article 6 it is provided that trials shall be in the domestic courts, with a clause that if there shall be an international tribunal

established later and if we go further and submit our cases to such international penal tribunal, neither of which of course has occurred, trial may be under those conditions in the international tribunal. But the definite engagement in the treaty is for trials in our own domestic courts, our national courts, and not before any international body.

CONSERVATIVE CHARACTER OF THE CONVENTION

I point those things out to show how conservative this treaty is, because a charge has been made that it is revolutionary and upsetting and a novel departure from anything that has occurred before. And phantoms have been raised by some about United States citizens being hauled off for trial somewhere before an international court. That cannot occur under the Genocide Convention as it is now before the Senate.

The United States signed that convention, and it is here for ratification. I said a word a moment ago about the organizations that support it. I repeat that they are an impressive list of organizations of United States citizens; as I have said, labor organizations, leaders in religious thought, economic groups, veterans' groups, a very impressive list indeed.

The opposition, so far as I know, has come, as the Solicitor General indicated a few moments ago, from a group within the American Bar Association which opposes on legalistic grounds. The resolution that was adopted by a divided vote in the house of delegates of the American Bar Association said that while genocide is to be deplored, nevertheless this convention does not solve important questions in a manner consistent with our form of government. Other organizations within the American Bar Association have reported in favor, but I take it that the vote of the house of delegates is above those other groups within the American Bar Association.

That attitude of deploring genocide but saying that this convention is not consistent with our form of government is, of course, the defeatist attitude, the hand-wringing gesture, "Very bad indeed, deplorable, but we just can't do anything about it."

That is the case that is presented, with those in support and those who oppose, so far as I am informed.

Senator McMAHON. Judge, you are president of the Bar Association of the City of New York?

Mr. PATTERSON. Yes, I am, Senator McMahon, but I am not today speaking for them. Mr. Berle is here, who is the chairman of our committee on international law, and by the committee's leave he will make a statement. The Association of the Bar of the City of New York passed a resolution favoring the Genocide Convention on recommendation of the committee that Mr. Berle represents.

PAST INSTANCES

On argument of the matter, on discussion of the convention, I take it that no extended argument is needed to show that mass destruction of human beings by national lines, racial lines, or religious lines is a crime that has shocked the conscience of mankind. We have examples of it in ancient history in the destruction of Carthage and in

the slaughter of the early Christians by the Roman Emperor. And we have recent examples of it, as the slaughter of the Armenians by the Ottoman Empire, and in time still vivid in our own memories, the wholesale slaughter of Jewish people, and Polish people, also, at the hands of the Nazis.

I take it, too, that no extended argument is necessary to show that those crimes have international repercussions, that they are not local matters merely. They have international repercussions in that they are associated with acts of aggression beyond the borders of those who commit the offenses. They also cause horror, resentment, and hostility, particularly on the part of kinsmen of those who are in course of extermination. They cause the wholesale flight of people for refuge, creating grave problems in the care of those unfortunate people on the hands of more merciful nations.

So there was solid substance behind the statement of the United Nations General Assembly when it declared that genocide was of international concern and should be an international crime. There is no confining, in other words, of this crime within national borders.

A FORM OF AGGRESSION

Senator PEPPER. Judge, is it not fair to say that there is some, at least, suggestion of an analogy in principle to a state moving across a border against another people adjacent thereto, and moving against a large number of people, millions of them, even if they be within the border, with the purpose of exterminating them? Isn't that a distinct and recognizable form of aggression?

Mr. PATTERSON. I believe it is, Senator. I think the two go along together. Certainly in the last instance we had, that on the part of Hitler and the Nazis, the two went hand in hand.

Senator PEPPER. And were part of the same general policy.

Mr. PATTERSON. That is right.

I take it, too, that no extended argument is necessary to show that this crime of genocide has called for collective action by the nations. The mere resolutions of the United Nations General Assembly suffice to prove that.

Nor should anything be necessary in the way of proof that the United States has taken the leadership, and that failure on the part of the United States now to take favorable action would be a blow, a heavy blow, to the moral leadership of the United States in the family of nations.

POINTS OF DISCUSSION

So we will center our discussion, may it please the committee, on these points of a legalistic character that have been raised by the opposers, on the point that this convention is said to resolve important questions in a manner inconsistent with our form of government—in a manner, I repeat, inconsistent with our form of government.

CONVENTION CONFORMS TO OUR SYSTEM OF GOVERNMENT

What is our form of government? It is a government of a federal character, with national and international matters the business of the Federal Government, and with local matters the business of the 48

States and subdivisions of those States. By the Constitution, the treaty-making power and also the power to define and punish offenses against the laws of nations, those powers are specifically given to branches of the Federal Government, clearly in line with the general classification that matters of national importance belong at the seat of the Federal Government while matters of local importance belong with the 48 States.

We have in our brief cases that expound those principles, cases in the United States Supreme Court, cases in which opinions were written by Justice Holmes, Chief Justice Hughes, and other leading jurists in the Nation.

This convention is in clear conformity with that dual system of government. It declares, the treaty does, that genocide shall be an international crime which the contracting parties undertake to prevent. It binds the contracting parties simply to enact legislation that will carry into effect the provisions of the convention and inflict penalties on violators within their borders, trials to be in the courts of the Nation and to be in accordance with the respective constitutions of the contracting parties.

GENOCIDE A FEDERAL MATTER

In other words, this convention deals with a matter that by the Constitution of the United States is in the Federal field. It does not deal to any degree with local matters, with what the provisions of a plumbing code should be in a city, or anything of that matter. It deals with an offense world-wide in its effects, an offense declared to be of grave international concern by the unanimous vote of the United Nations General Assembly.

More specifically, I think the objection may be this, and I take this from the report of the special committee of the American Bar Association committee on peace and law, through the United Nations. In that report you can find the thread of a thought—I say the thread of a thought because I don't think it is stated categorically anywhere, but the thread of a thought—that this convention goes along unheard-of lines, lines of a revolutionary character, in that it imposes individual obligations on persons by treaty or by international law.

I submit that a careful reading of the convention will afford no support for that charge whatsoever. No individual obligation will be imposed upon any United States citizen or any subject of Britain or citizen of any country until a national law is passed by that country. Then and not until then will there be any duty or obligation of any sort imposed upon the individual citizens. That argument, I submit, misses the whole point of this convention, which is a contract on the part of the signing and ratifying governments that they will pass legislation of their own in accordance with their own constitutions, to make genocide a crime within their own borders.

NO OBLIGATION ON A STATE TO PASS IMPLEMENTING LEGISLATION

Senator PEPPER. Pardon me, Judge. Should you add also that they will undertake to see that such laws are duly enforced?

Mr. PATERSON. That is right. But there is no penalty, no obligation, no duty of any sort, applicable to the citizens of the United

States simply by this convention. There is a duty imposed upon the United States as a Government to pass a law, and if the treaty is ratified, as I trust it will be there is a moral obligation upon Congress to pass suitable laws to give effect to the terms of this convention, and that is squarely what the convention says in article 5 thereof.

That is only, or has been pointed out this morning, a familiar exercise of the treaty-making power. It was pointed out that precisely the same method was adopted on the sealing trade, precisely the same on slavery, precisely the same on submarine cables. And those treaties, I am sure the committee will have in mind, are treaties in various fields. They range, as I say, from cables, and that is of course of a communications and commerce character, to slavery, which is, I think, primarily of a moral character.

There have been many others: Treaties relating to prostitution, treaties relating to obscene literature, treaties relating to the opium trade. They are all comparable to the convention that is before the Senate for ratification. That is how revolutionary this Genocide Convention is deemed to be in certain quarters.

ALLEGED DOMESTIC CHARACTER OF GENOCIDE

It is claimed, and I find that too in the report of the special committee I referred to a moment ago, that destruction of human beings in groups is a matter of domestic concern only. Think of it. In the face of the history of the last 15 years. A matter of domestic concern only, in disregard of the events of notorious importance, and completely in disregard of the unanimous vote of 55 nations in the United Nations General Assembly that it is a matter of international concern.

Along the line of that same point, I take it the point is made that it will upset the dual character of our Government. A terrible suggestion. The dual character of our Government, because the same act, it is said, might be murder under State law and genocide under Federal and international law; only under Federal law, of course, so far as its impact on the individual citizen is concerned, as I pointed out a moment ago.

Is that so unique? The same act that is larceny under State law, if it occurs in interstate commerce, is a criminal offense under the acts of Congress. And what may be theft or embezzlement under State law we know by daily examples is also using the mails to defraud, to be prosecuted by act of Congress in the United States courts.

MURDER AND GENOCIDE NOT THE SAME THING

But, of course, the assumption that murder and genocide are the same thing is an unfounded assumption, as the convention shows in article 2 by its definitions. There are other acts than deliberate killing comprehended within genocide. And also the gravity of the offense of genocide, I submit respectfully, goes far beyond the gravity of individual murder, and is infinitely more shocking to the conscience of the world.

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THINNESS OF OBJECTIONS

So much for those points. There are other objections leveled, even thinner and more far-fetched than those. It is said that the place of trial of offenders—and there are no offenders until Congress passes an act, be it said—might be in a distant remote place before an international tribunal, and that might be in violation of provisions of the Bill of Rights of this country. Article 6 of this convention is a square answer to that. The trial is to be, so far as the United States is concerned, within the boundaries of the United States. There is the further provision that it might be an international court, provided this country signifies its acceptance of that jurisdiction. But there is no such court in existence at the present time, and this country certainly has not in advance surrendered any rights to such court. So how idle it is to raise a bogey like that as an argument against the ratification, in this present day and age of the genocide convention.

FREEDOM OF SPEECH

I think a word has been said about the right of free speech and of free press being placed at hazard by the Genocide Convention, because one of the acts defined to be comprehended within genocide and condemned by the treaty is public incitement to genocide.

Senator McMAHON. It would be a terrible thing to stop that.

Senator PEPPER. Do they insist the press should reserve that prerogative?

Mr. PATTERSON. It was Mr. Justice Holmes who said, in a case we cite in our brief, that it was never comprehended that counseling of murder could not be called criminal because it would be in violation and infringement of the right of free speech. And I remember Abraham Lincoln saying something like this: "Must I shoot the simple soldier boy who deserts, and not touch the hair on the head of the wily agitator who tells him to desert because that might be free speech?"

Senator McMAHON. We haven't a right to cry "Fire" in a crowded theater, have we?

Mr. PATTERSON. That was too, I think, Mr. Justice Holmes, was it not?

Senator McMAHON. Yes.

Mr. PATTERSON. Then there is a point made in this special report, or the report of the Special Committee of the American Bar Association on Law and Peace through the United Nations, that there is some conflict in this treaty with the power given by the Constitution to Congress to define and punish offenses against the laws of nations.

In the first place that power is not exclusive. If it were, we could not have entered into treaties having to do with any of these matters that have been mentioned here a moment ago. This convention is in strict conformity with that provision of the Constitution, because it does put it to the Congress of the United States to define and punish an offense against the law of nations. It does that in article 5 of the Genocide Convention, that I have discussed already. I submit that that argument borders on absurdity.

Senator McMAHON. Judge, I just wanted to know—I have an engagement at one, and I imagine Senator Pepper has, too. We thought

we would resume at 2:30. I do not want to hurry you. You are perfectly welcome to come back at 2:30.

Mr. PATTERSON. I am practically concluded. One minute will suffice.

APPROPRIATENESS OF LANGUAGE OF THE CONVENTION

There are textual objections made, objections to the words "as such." That is in the definition, in article 2. I will not detain this committee with a discussion of those matters. They are, as I see them, utterly trivial. There is objection to the word "destroy" in contrast to the word "kill." Both, I submit, are appropriate.

And then some comment is made on the words "in whole or in part" in the definition, and particularly as to the intent required as given by article 2 of this convention. I take it "in part" plainly means "in substantial part" or "in considerable part." It could not make sense otherwise, in a matter that deals with members of a group and with an intent to destroy members of a group.

RATIFICATION WITHOUT RESERVATIONS URGED

Finally, may I submit that no reservations are required; that ratification should be simple, plain, and without reservations. I remind the committee that implementing legislation may be relied upon to clarify and to define with more particularity, in a spirit quite friendly to the provisions of the convention, the various matters that might be suggested as subjects of reservations. They can all be taken care of in a way quite consistent with the text of the convention by the legislation that will implement it.

For example, of course in declaring a criminal offense you have to put in the words, I dare say, "feloniously, willfully" and so forth and so forth. They are not in the convention, but naturally enough those provisions have their place in the implementing legislation.

The only other reservations that I have seen suggested are merely to emphasize matters already plainly covered in the convention. I don't think it is necessary, if you say "No," and that is in the convention, to add by reservation, "and we mean it, No!" or "Positively, No!"; and that is, I submit, of the kind that is suggested by some of these proposed reservations. They are all unnecessary, as we see it.

PROPOSED RESERVATIONS DEAL WITH TRIVIALITIES

We say, in conclusion, without scruple and without reservation, that the objections leveled at the convention have no foundation, no substance. They deal with trivialities, with matters of hair splitting. They are the essence of the counsel of timidity.

The argument that this convention is not consistent with our form of government is as elusive as possible. It takes only the most general examination of our form of government or system of government and a reading of the treaty to see how closely in conformity to our form or system of government the provisions of this treaty are.

The inference that the Government of the United States is a peculiar government, that it cannot do what other governments can do, that it is, as Justice Holmes said, "incompletely sovereign," we submit, is an entire fallacy.

If the Constitutional Convention of 1787 had yielded to arguments like those that are made in opposition to the ratification of this treaty, and similar arguments were presented to that Convention and to the State conventions that ratified the Constitution, we would have had no United States Constitution, no United States, and no Nation.

This Genocide Convention, as we see it, raises moral issues, moral issues that, by the lesson of history, cannot be evaded or ignored, that cannot be defeated or dodged by the points of a superficial and technical character that have been raised in opposition to the ratification of the convention. We urge ratification, ratification without reservations.

Thank you.

Senator PEPPER. Judge, may I just ask this one question: Has the bar group to which you referred passed any judgment with respect to any of the other proposed conventions under the United Nations, such as the Freedom of the Press Convention and others?

Mr. PATTERSON. I believe that they have on the Declaration of Human Rights. Whether they have on the others or not I cannot say.

Senator MCMAHON. Judge, thank you very, very much indeed. Thank you, Mr. Rosenberg, Mr. Cox, and you other gentlemen. It was a very wonderful statement, Judge. We will recess and we will meet again at 2:30 this afternoon in this room.

I might say before we recess that we have 15 witnesses. Three have been heard. Of course the three that have been heard have represented the State Department, the Department of Justice, and this United States Committee. I do not wish to unduly hurry any of the witnesses, but we would appreciate it if you would make your statements brief and succinct, so that we can finish at least this list of witnesses before we recess this evening.

(Whereupon, at 1 p. m., a recess was taken until 2:30 p. m. of the same day.)

BRIEF SUBMITTED FOR THE UNITED STATES COMMITTEE FOR THE GENOCIDE CONVENTION IN SUPPORT OF RATIFICATION

(To the Honorable Brian McMahon (Chairman), Elbert D. Thomas, Bourke B. Hickenlooper, Claude D. Pepper, Henry Cabot Lodge, Jr., Subcommittee of the United States Senate Foreign Relations Committee, from the Legal Advisory Committee; Robt. P. Patterson (Chairman), A. A. Berle, Jr., Louis Caplan, Charles P. Curtis, Oscar Cox, Wm. J. Donovan, Allen W. Dulles, Chas. Fahy, Murray I. Gurfein, Thomas H. Mahony, Jeremiah T. Mahoney, Joseph M. Proskauer, Wesley A. Sturges, Harrison Tweed; the United States Committee: Samuel McCrea Cavert, Thomas H. Mahony (Chairman), James N. Rosenberg; Willard Johnson, General Secretary)

DECLARATION BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS

On December 11, 1946 the United Nations General Assembly unanimously adopted a resolution approved by its Legal Committee declaring that "genocide is a crime under international law." It called for a Convention to carry out the Declaration. On December 9, 1948 the Convention, now before the United States Senate, was unanimously adopted by the General Assembly. Fifty-five nations voted "aye". None abstained. None dissented. This unanimity was brought about largely through leadership of the United States.

THE CONVENTION

"THE CONTRACTING PARTIES, (preamble) having considered the Declaration made by the General Assembly of the United Nations . . . dated Dec. 11, 1946 . . . recognizing that at all periods of history genocide has inflicted great losses on humanity . . hereby agree as follows: 'genocide whether committed in time of peace or in time of war is a crime under international law, which they undertake to prevent and punish.' " (Art. I)

The crime (Art. II) means various acts when "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such." The criminal acts, which are enumerated, occur only when the requisite intent to destroy the group is proved. The punishable persons (Art. IV) are "constitutionally responsible rulers, public officials or private individuals." This important provision is designed to reach even heads of state who may hereafter practice genocide under the cloak of legality.

The punishment of the crime is left wholly to "the Contracting Parties" (Art. V). Persons charged with the crime (Art. VI) can be tried only by "a competent tribunal of the State in the territory of which the act was committed." The question of possible later jurisdiction of an international court is left for future action by the "Contracting Parties."

The Convention comes into effect only when twenty nations ratify.

SUPPORT OF RATIFICATION

The documents and testimony to be submitted herewith show the nation-wide extent of support for ratification as asked for by the President of the United States. Representative men and women and organizations of our country urging ratification include leaders in religion, labor, law, veterans, women's organizations, etc. (See Appendix I).

THE OPPOSITION

Hitherto the American Bar Association has strongly advocated expansion of the jurisdiction of the International Court; has urged the U. S. Senate to rescind the so-called Connally reservation; has urged that the United States accept compulsory jurisdiciton of the International Court; has published broadcast the findings of some two hundred leaders of American and Canadian thought, expressed in a pamphlet entitled "The International Law of the Future" (See Appendix II).

In September 1949 however the House of Delegates of the American Bar Association by divided vote adopted resolutions in line with recommendations of a Special Committee of six, viz: Wm. Clarke Mason, Osmer C. Fitts, Cody Fowler, George Brand, Chas. Ruzicka, George H. Turner. These resolutions, which, we submit, depart from the uniform prior policies of the American Bar Association, are as follows:

> "*Be It Resolved*, That it is the sense of the American Bar Association that the conscience of America like that of the civilized world revolts against genocide (mass killing and destruction of peoples); that such acts are contrary to the moral law and are abhorrent to all who have a proper and decent regard for the dignity of human beings, regardless of the national, ethnical, racial, religious, or political groups to which they belong; that genocide as thus understood should have the constant opposition of the government of the United States and of all of its people.
>
> *Be It Further Resolved*, That the suppression and punishment of genocide under an international convention to which it is proposed the United States shall be a party involves important constitutional questions; that the proposed convention raises important fundamental questions but does not resolve them in a manner consistent with our form of government.
>
> *Therefore, Be It Resolved*, That the convention on genocide now before the United States Senate be not approved as submitted.
>
> *Be It Resolved Further*, That copies of the report of the Special Committee on Peace and Law Through United Nations and the suggested resolutions from the Section of International and Comparative Law be transmitted, together with a copy of this resolution, to the appropriate committees of the United States Senate and House of Representatives.*"

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*As to previous position of A. B. A. regarding expansion of international law see Appendix II.

SUPPORT WITHIN THE AMERICAN BAR ASSOCIATION

The foregoing resolution overruled the American Bar Association's Committee on the United Nations which had proposed ratification, subject to reservations as follows:

"*Resolved*, that the American Bar Association approves ratification of the Convention on the Prevention and Punishment of the Crime of Genocide now pending before the United States Senate subject to *effective reservations* as follows:

1. That the words "with intent to destroy in whole or in part a national, ethnical, racial or religious group as such" in Article II refer to all the inhabitants of a country who are identifiable as of the same national, ethnical or racial origin or of the same religious belief and that none of the acts enumerated in the sub-paragraphs of the said Article II shall be deemed to have been committed with the requisite intent to destroy such a group in whole or in part unless such acts directly affect thousands of persons.

2. That the phrase "mental harm" in Article II (b) means permanent physical injury to mental faculties of members of a group, such as that caused by the excessive use or administration of narcotics.

3. That the provision "direct and public incitement to commit genocide" in sub-paragraph (c) of Article III shall not have any application to the United States, because to render such incitement unlawful in the United States it is sufficient to outlaw conspiracy to commit genocide as is done in sub-paragraph (b) of Article III and the attempt to commit genocide as is done in sub-paragraph (d) of Article III without specifically enumerating the act of direct and public incitement as contained in sub-paragraph (c) of Article III.

4. That the phrase "complicity in genocide" in Article III (e) means "aiding, abetting, counseling, commanding, inducing, or procuring the commission of genocide."

5. That the phrase "responsibility of a state for genocide" in Article IX does not mean responsibility of a national government to pay damages for injuries to its own nationals and that this phrase does not mean that a national government may be prosecuted as a defendant in any case arising under the Convention.

6. That Articles I through VII of the Convention are not self-executing in the United States; that federal legislation will be necessary to carry out the provisions of these Articles, and such legislation will be limited to matters appropriate under the constitutional system of the United States for federal legislation.

7. That a person charged with having committed an act in the United States in violation of the statutes enacted to implement the Convention shall be tried only by the federal court of the district wherein the act is alleged to have been committed."

Special attention is called to the following statement of this committee of its reasons for supporting ratification:

"1. The slaughter of huge groups of people, the indiscriminate killing of men, women and children who fit into some religious or other classification, the killing of them merely for the sake of killing is the most abominable of all crimes.

"2. People from all the earth meet on common ground in condemning a crime so heartless and barbaric as genocide, and this international unity of thought presents a compelling opportunity for action. The main objective can be effected even though reservations are necessary to maintain individual legal systems.

"3. Genocide is a crime with international effects and reverberations because, when the members of a group in one country are murdered because of their group membership, violently hostile feelings are aroused in the hearts of all members of that group in other countries. Hostile feelings can easily lead to active hostilities. Hostilities anywhere affect peace everywhere.

"4. Religion is international. It knows no national boundaries. Hence the destruction in a country of a religious group must in the nature of the case arouse instantaneously in all other members of that group everywhere deep-seated resentment.

"5. A convention is necessary because under the Nuremberg law genocide is not an international crime, if not committed in connection with or during war.

"6. Recognizing that the facts are as set forth above, the United Nations for two years has had some of the ablest lawyers in the world at work drafting an international criminal law against genocide and the convention is the result. It is a product of the work of lawyers from the Orient as well as the Occident; lawyers with civil as well as common law backgrounds; lawyers speaking many different languages.

"7. Naturally, when such an instrument is laid down alongside the highly specialized legal system of any one country with a view to being integrated therein there are some places where it does not fit. Instead of being rejected in toto it should be brought into relationship by appropriate reservations. That is what we believe we have done as regards the convention and the legal system of the United States by the reservations that we propose.

"8. Under the reservations that we suggest the treaty will not be self-executing, and only that implementing legislation will be required to be adopted by Congress that is appropriate for federal enactment under our constitutional system."*

Even a cursory glance at the Convention confutes the "constitutional" objections. Article I of the Convention shows that the Convention is not self-executing, but that it will require enactment of an Act of Congress to put it into effect. Article V shows that the limit of obligation of ratifying nations is to enact *only* such legislation for punishment of the crime as shall be "in accordance with their respective constitutions." Persons charged with the crime can be tried (Article VI) only "by a competent tribunal of the state in the territory of which the act was committed." As to the proposed reservations of the group supporting ratification we submit that these matters are for consideration of Congress in the necessary enabling legislation and should not be made the subject of reservations. In view of the objections which have been raised against ratification and because failure to ratify would, we submit, seriously weaken the leadership of our country in the grave moral conflicts which engulf the world we propose to show in detail that the opposing arguments are untenable.**

INTERNATIONAL LAW AND TREATIES

Clear it is that international law, if it is to have any sanctions for enforcement, must depend on treaties and not alone on custom. When the opposition arguments are studied, we submit that in reality they oppose not only the Genocide Convention, *but all international law involving individual responsibility for its infractions.* They turn their eyes from, and would tear down the moral leadership of the United States in the post-war world. They fail to realize that the Soviet block would inevitably make world-wide capital of American repudiation of even the limited code of morality set up by the Convention. They reject the International Section of the American Bar Association which in September 1948, while the Genocide Convention awaited action by the United Nations General Assembly, declared "that the effective administration of international law requires individual responsibility for its violation, with competent courts . . . for trial of offenders."

The Department of State, in line with its immense responsibilities of waging a political struggle for the minds of men on a world-wide basis, understands this full well.

The opposition openly attacks the concept of "government by treaties." They refuse to see that a higher level of international conduct can never be made effective except by treaty. They deride the notion that individual acts and conduct can menace the peace and security of the world—and this, despite recent examples of the twin scourges of Nazi repression inside and Nazi aggression outside. They deny the lesson of history that domestic atrocities are the prelude to foreign aggression.***

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*See report of A. B. A. section on International and Comparative Law, 1949, pp. 190-2.

**See text of Convention, Appendix III.

***In a long, scholarly article "The Rights of Man in the World Community" (Yale Law Review Dec. 1949, pp. 60–115) Prof. M. S. McDougal of Yale Law School and Professor G. C. K. Leighton, Visiting Professor at Yale, analyze in great detail the arguments of Messrs. Holman and Rix the two American Bar Association chief opponents of the Genocide Convention. The article concludes that the opposition (p. 114) "misconceives every factor . . . misconceives . . . the world-wide independences of peoples everywhere . . . misconceives our obligations under the United Nations Charter . . . and even the reach of traditional customary international law . . misconceives . . . the scope of Federal power under our Constitution . . ."

As former Secretary of State George Marshall said:

> "Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field."

Nor are the objectors willing to acknowledge that, basic to the rule of law in the international field, is a willingness of nations to adhere to the common standard. Repudiation by the United States of the Genocide Convention would destroy all hope for a minimum codification to outlaw what even the objectors themselves deplore.

They reject the reasoned views of their Committee on the United Nations showing why genocide is an international crime; they fail to recognize that genocide inevitably has a direct impact upon other nations; that it drives countless fugitives to exile to escape certain death; that such dislocations of people, in turn, force grave problems and burdens upon the receiving countries; that religions are international; that genocide breeds world unrest, resentment and hatreds which can be the spark for war. Such matters are indeed of profound international concern.

They admit that destruction of groups of human beings is at least as offensive to universal morality as the murder of an individual. They fail, however, to recognize the necessity for deterrents against potential criminals by expressed and solemn warning in the form of international law. They declare that "the conscience of America . . . revolts against genocide . . . that such acts are . . . abhorrent . . . " but insist that our Constitution makes us helpless to prevent the very acts which can kindle war. Rejecting the decision of the entire world that genocide is an international crime and quoting the United Nations Charter (Article 2 (7)) which declares that "nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state", they contend that mass destruction of an entire racial, religious or national group is exclusively an internal domestic matter.

THE POSITION OF THE UNITED STATES

The Genocide Convention was a response to the voice of the entire world. The United States, through the Executive branch of our government, joined actively in the Assembly resolutions on genocide.

The matter of preventing and punishing genocide is clearly within the necessary objectives of a sound foreign policy. 1) It is a powerful weapon in the moral war; 2) It is an effort to prevent aggression and an essential step towards preserving peace; 3) It deals with the vital question of the dislocation of peoples with attendant international consequences; 4) It represents our national participation in the suppression of what has been universally condemned by the family of nations; 5) It is a strong deterrent to heads of governments, warning them that even they can be punished by successors.

We are now told that the United States has no constitutional power to carry out its foreign policy in cooperation with other nations. If this were so, we should indeed be facing the dilemma pointed out by Mr. Justice Holmes:

> " . if one of the proper subjects of sovereignty be then utterly lost to us, then the people of the United States are but incompletely sovereign." (*Missouri* v. *Holland*, 252 U. S. 416, at p. 434).

We believe, with the Supreme Court of the United States, that the government of the United States is not "incompletely sovereign", but that the plenitude of sovereignity vested in nations inheres in the Federal Government in matters of international relations.

DOMESTIC QUESTIONS AND INTERVENTION

The opposition leans upon Article 2 (7) of the United States Charter quoted above. Insisting that genocide is a "domestic" crime and nothing more, they then proceed as if the United Nations were being given the right to invade the domestic field, and as if any treaty or implementing legislation, freely accepted by the nation involved, is a derogation of the Charter provision. They fail to comprehend that the Genocide Convention gives no general authority whatsoever to "the United Nations to intervene" in domestic matters. Significantly, no member state of the United Nations believed that its provisions were inconsistent

with Article 2 (7). Under the view of the opposition, only offenses committed on the high seas, or perhaps in the stratosphere could come within the reach of international agreement designed to create individual responsibility.

ARTICLES OF THE CONVENTION

The only provision in the Genocide Convention dealing with the competence of the United Nations is Article VIII. That article provides:

> "Any contracting party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of Genocide or of any of the other acts enumerated in Article III."

The specific limitation is to "*action under the Charter of the United Nations.*" In this article of the Convention there is therefore no extension of the powers of the United Nations, nor is there any amendment or enlargement of the procedures under the Charter. The veto power in the Security Council, for example, is still present. Article VIII cannot, without specific amendment of the Charter itself, be more than a framework of reference.

Nor is there any obligation upon the United States, under the Genocide Convention, to take any action in the form of intervention, although this has been vaguely hinted by its opponents. By Article I the contracting parties "confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish." The form of that "undertaking" is however clearly restrictive by the specific obligations undertaken in the Convention itself. Those specific obligations are contained in Articles V, VI and VII.

By Article V, "The contracting parties undertake to enact, in accordance with their respective constitutions, the necessary legislation to give effect to the provisions of the present convention, and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in Article III." Under Article VI persons charged with genocide are to be "tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to such contracting parties as shall have accepted the jurisdiction of such tribunal." Article VII provides for extradition in accordance with the laws and treaties of the contracting party. The General Assembly was duly informed that no extradition from our country can be had unless legislation by Congress to that effect is hereafter enacted.

Thus, the "undertaking" to punish genocide is limited to crimes committed in the domestic territory of the United States, to be tried by our own courts pursuant only to legislation which must be later enacted. It is well established that a treaty which is made dependent (as here) on legislative action does not take effect as the law of the land until such legislative action is taken. (*Foster* v. *Neilson*, 2 Pet. 253, also *U. S.* v. *Hudson*, 11 U. S. 31). In *Foster* v. *Neilson*, decided in 1819, Chief Justice Marshall lays down the principle. Pointing out that "our constitution declares a treaty to be the law of the land," the great Chief Justice announced that "when either of the parties engages to perform a particular act . . . the legislature must execute the contract before it can become a rule for the court." (2 Pet. 314.)

THE "CONSTITUTIONAL" ARGUMENTS AND THE TREATY-MAKING POWER

Attack is made upon the use of the treaty-making power to punish genocide. It is claimed that use of the treaty-making power is no proper substitute for domestic legislation on essentially domestic matters. What the opposition overlooks is that genocide is *not* a domestic matter and that the foreign policy of the United States must of necessity be broad enough to carry out our international obligations and permit us to conduct our foreign relations. If it is essential for the United States to stand up and be counted in the family of nations on matters which we and all other nations consider to be of grave international concern, that determination must be made, under our Constitution, by the Executive with the concurrence of the Senate.

It is contended that the crimes sought to be defined would normally be domestic crimes within the jurisdiction of the several states of the Union. Hence, it is argued, the Federal Government has no jurisdiction under the treaty-making power. The argument, in essence, is that if a subject be normally within the

competence of the several states, it may not also be dealt with under the treaty-making power.

Aside from the answer of history, the short answer is that if that were so, the United States could not participate in any international codification at all which aims at creating individual responsibility for international crimes. For the several states of the Union may not "enter into any treaty" (United States Constitution, Art 1, § 10). And if the United States themselves could not do so, there would be an utter lack of constitutional power to carry out international obligations and we would indeed be "but incompletely sovereign."

In the words of the Supreme Court:

> "If the National Government has not the power to do what is done by such treaties, it cannot be done at all, for the states are expressly forbidden to 'enter into any treaty, alliance, or confederation.'" (*Hauenstein* v. *Lynham*, 100 U. S. 483, 490).

The exercise of the treaty-making power is not in derogation of states' rights. By express constitutional grant, the Federal Government is the representative of the States in dealing with foreign relations. In international affairs it acts for all the states under our federal system.

As the Supreme Court has said:

> "Complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states." (*United States* v. *Belmont*, 301 U. S. 324, 331).

In reaching this conclusion the Court turned to Madison's debate in the Virginia Convention; analyzed the "external powers of the United States" and declared that "the supremacy of a treaty in this respect has been recognized from the beginning". (3 Elliott's Debates 515).

The Supreme Court has recognized that reciprocal international obligations under the law of nations must be carried out by the Federal Government itself. The Supreme Court has said (per Chief Justice Waite):

> "There is no authority in the United States to require the passage and enforcement of such a law by the states. Therefore, the United States must have the power to pass it and enforce it themselves, or be unable to perform a duty which they may owe to another nation, and which the law of nations has imposed on them as part of their international obligations. This does not, however, prevent a state from providing for the punishment of the same thing." (*United States* v. *Arjona*, 120 U. S. 479, 487.)

The very impact on our foreign relations makes international arrangements by individual states of the Union impracticable. The reserved powers of the Tenth Amendment have never been construed by the Supreme Court to limit the expressed supremacy of treaties over state constitutions and state laws in the Sixth Article of the Constitution.

The Article specifically provides that:

> "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The founding fathers recognized that treaties must prevail over state constitutions and state laws. The treaty power itself has never been limited. The framers of our Constitution thought "it most safe", in Madison's words, to leave the treaty power without enumeration, "to be exercised as contingencies may arise". (3 *Elliott's Debates*, 514—2d Ed. 1836–1866). The sweep of the treaty-making power, considered in our own times, was well expressed in the classic statement of Chief Justice Hughes (23 Proc. Am. Soc'y of International Law 194—1929):

> "I think it perfectly idle to consider that the Supreme Court would ever hold that any treaty made in a constitutional manner in relation to external concerns of the nation is beyond the power of the sovereignty of the United States or invalid under the Constitution of the United States where no express prohibition of the Constitution has been violated."

In short, the reserved powers of the states in the Tenth Amendment of the United States Constitution are specifically limited by Article VI—the supremacy clause, and by the treaty-making power. (*Missouri* v. *Holland*, 252 U. S. 416–434).

> "The powers of the states . . . set no limit to the treaty-making powers." (252 U. S. at p. 434)*

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*(See also Corwin, *National Supremacy, Treaty Power* v. *State Power* [1913]; also Corwin, *The Constitution, What it Means Today*, p. 101, 10th Ed. 1948).

The treaty-making power "extends to all proper subjects of negotiations between nations." (*Geofroy* v. *Riggs*, 133 U. S. 258, 266; *Asakura* v. *Seattle*, 265 U. S. 332, 341; *Santovincenzo* v. *Egan*, 284 U. S. 30; see Corwin, *The Constitution, What it Means Today* (1947) p. 100).

Discussing the treaty-making power at a meeting in 1907 of the American Society of International Law, Elihu Root summed up in these words "So far as the real exercise of the power goes, there can be no question of state rights, because the Constitution itself, in most explicit terms, has precluded the existence of any such question." (Proceedings 1907, pp. 49-50). No limit has ever been set by the Supreme Court as to what are "the proper subjects of negotiations between nations." ** Unless a treaty were contrary to a specific prohibition of the Federal Constitution, or actually destroyed the individual states, or ceded their territory, it is plain that the Court will not interfere with the treaty-making power as vested in the President and Senate. (*Geofroy* v. *Riggs*, *supra*, at p. 267).

The opposition overlooks the long history of federal treaty-making on subjects that are ordinarily within the competence of the states. It has been uniformly held that a treaty prevails over state law, despite the otherwise admitted competence of the state to deal with the subject. The reason for the treaty need be no more than to strengthen the friendly relations between nations. (*Asakura* v. *Seattle*, *supra*.)

Thus, the right of aliens to hold land within a state and the right to engage in pawnbroking from which the state sought to exclude aliens have been sustained under the treaty-making power. (*Geofroy* v. *Riggs*, *supra*; *Asakura* v. *Seattle*, *supra*). The power of the Federal Government to regulate the protection of migratory birds, under the treaty-making power, has been sustained. (*Missouri* v. *Holland*, 252 U. S. 416), despite recognition that normally the subject was within state jurisdiction. If the United States can constitutionally, under the treaty-making power, protect migratory birds, there is no reason why it cannot constitutionally protect groups of human beings.

"OFFENSES AGAINST THE LAW OF NATIONS"

The argument is advanced that, under Article I, Section 10 of the Constitution, Congress shall have power "to define and punish . . . offenses against the law of nations," and that, therefore, the President and the Senate may not make treaties of that kind. We have seen no authority cited in support of that proposition. The treaty-making power in Article II of the Constitution is concurrent with the Congressional power in Article I, as in the case of naturalization. (*U. S.* v. *Reed*, 73 F. 2d 153, cert. den. 299 U. S. 544).** Congress

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** Many treaties have dealt with subjects which are within Congressional power under other articles of the Constitution. See, for example, the variety of agreements, which concern matters otherwise the subject for regulation under the commerce power. These include agreements which affect customs duties and the regulation of commerce, such as commercial aviation, trade-marks, agriculture, trade in dangerous drugs, and traffic in women, among others. *Weinfeld, Labor Treaties and Labor Compacts*, 5 (1937). Treaties have also extended to copyrights, naval armament, and taxation, each of which equally comports with a specifically granted power. See also, *Anderson, Extent and Limitations of the Treaty Power*, 1 Am. J. Int't L. 636, 657 (1907).

*** The question as to the power of Congress under Art. I, Sec. 10, of the Constitution "to define and punish piracies and felonies committed on the high seas and offenses against the law of nations" arose squarely in *U. S.* v. *Flores*, 289 U. S. 137, in an admiralty case. There the Supreme Court analyzed the relation of the Section just quoted to Art. III, Sec. 2 of the Constitution by which the judicial power of the U. S. was extended to all cases of admiralty. Though no treaty question was involved, the court's unanimous decision (opinion per STONE, C. J.) shows that the power of Congress are not exclusive but complementary with other powers such as that of treaty-making.

Considering the two clauses before the Court, the Chief Justice said (149–50):

"The two clauses are the result of separate steps independently taken in the Convention . . To construe the one clause as limiting rather than supplementing the other would be . . . to deny both the states and the National Government powers which were common attributes of sovereignty before adoption of the Constitution . . . We cannot say that the specific grant of power to define and punish felonies on the high seas operated to curtail the legislative or judicial powers conferred by Art. III, § 2."

The lower court was reversed. Solicitor General Thos. D. Thatcher's brief urged successfully (p. 139) that the two clauses of the Constitution are "complementary . . . To construe the express power to define and punish piracies . . . as an exclusive definition of the power of Congress . . . would at once bring the two clauses into irreconcilable conflict with the result that a power inherent in sovereignty would be found to reside neither in the States nor the United States."

has power to define offenses against the law of nations, but that power does not limit the treaty-making power. In *Asakura* v. *Seattle*, 265 U. S. 332–341 the Supreme Court declared:

> "The treaty-making power of the United States is not limited by any express provisions of the Constitution."

It extends, said the court,

> "to all proper subjects of negotiation between our government and other nations."

In *Santovincenzo* v. *Egan* (283 U. S. 3040) Chief Justice Hughes stated that: "the treaty-making power is broad enough to cover all subjects that properly pertain to our foreign relations."

The true significance of Article I, Section 10, is that it makes manifest that the founding fathers did not consider "offenses against the law of nations" to be limited to those which existed in 1789, but that an expanding law of nations was in contemplation. The extent of such expansion has been well indicated by Secretary of State Stimson. In 1932 he instructed the American Delegation at the Disarmament Conference in Geneva that "this Government could, on the basis of a treaty, exercise control of the manufacture of munitions." (*Hackworth, Digest of International Law*, p. 21). Thus Secretary Stimson also showed how treaties can lawfully impose individual responsibility.

USE OF TREATY-MAKING POWER

The use of the *treaty-making power* to define new "offenses against the law of nations" is a matter of history. Thus various multipartite treaties defining new offenses against the law of nations have been made by the President and ratified by the Senate alone. Among these are:

The Convention on Slavery,
United States Treaty Series No. 383 (1890), and United States Treaty Series No. 778 (1926);

Treaty for the Suppression of the Opium Trade,
United States Treaty Series No. 61 (1883), and United States Treaty Series No. 612 (1913);

The Convention on Obscene Publications,
United States Treaty Series No. 559 (1911);

The Convention for the Suppression of the White Slave Traffic in Women and Children,
United States Treaty Series No. 496 (1904);

Multilateral Treaty for Persons Breaking or Injuring Submarine Cables,
United States Treaty Series No. 380 (1889);

Multilateral Treaty Re Slavery adhered to by the United States, March 21, 1929, Slave Trade,
United States Treaty Nos. 383, 778.

All of these treaties created new "offenses against the law of nations."* They were based on creating *individual responsibility* for violation of those treaties; but it has never been thought that they limited the Treaty making power.

The position assumed by the opposition is, in effect, that matters of international consequence, submitted by the General Assembly within the framework of the United Nations, require ratification by the individual states of our Union. No other result can flow from the argument that punishment of international crimes is within the exclusive competence of the states of the Union. The argument fails to take into account the international character of the crime, and would abolish one of the cardinal foundations of our federal system—that the treaty-making power is not within the competence of the individual states but is in

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*Judge Manley O. Hudson in an address to the American Bar Association on September 11, 1944 (30 A. B. A. Journal 562 et seq.), in discussing the International Law of the future, refers to those people who are "hesitant to support even modest proposals for international organization for fear of a loss of national sovereignty." This is the old, old fear which attacks the cautious genocide proposals. "As a matter of law", Judge Hudson continues, "the sovereignty of each state is subject to the international law which regulates the relations of states . . ." Stressing the far-reaching nature of the treaty-making power, he observes that limitations thereon "would mean the undoing of the great constructive work of John Marshall . . . would fly in the face of the fact that no provision in any of the hundreds of treaties which we have concluded . . . has ever been authoritatively pronounced to be beyond the constitutional power of our Federal Government". (p. 563). He refers (p. 591) to "the great series of multipartite international agreements which now cover many phases of our everyday life . . . With restoration of peace fresh opportunity will come to us to continue the legislative process." This is the opportunity which a group of lawyers would discard.

the executive subject to approval by the Senate. The framers of the Constitution might have insisted that the treaty-making power be subordinate to the powers of the states. Instead, (in the light of the failure of the Articles of Confederation) they specifically provided for the essential supremacy of treaties over state law.

The argument of the opposition actually presupposes a conflict between state and federal power which does not exist. The assumption is that federal punishment of genocide would be repulsive to the states. Yet no reason is offered as to why the states should be less eager to punish genocide than mankind in common. The states are represented in the Senate. And as John Jay (later the first Chief Justice of the Supreme Court) said (in answer to the objection that the President and the Senate may make treaties "without an equal eye to the interests of all the states"):

> "As all the states are equally represented in the Senate, and by men the most able and the most willing to promote the interests of their constituents, they will all have an equal degree of influence in that body . . ." (Federalist Papers, No. 64).

The plain fact is that one cannot ratify common international action by separate submissions to forty-eight state legislatures. Most of what is embraced within the crime of genocide is already punishable by state law. Murder and assault, together with conspiracy and incitement, are already domestic offenses.

THE INTERNATIONAL CRIME

The international crime marked by the Convention is not the murder of individuals, but the commission of acts with intent to destroy national, ethnical, racial or religious groups as such. The subjects of protection are these groups of human beings. Destruction of human beings as groups constitutes the international crime—a proven threat to world peace—, as distinguished from the local crime of homicide or assault.

The imposition of punishment for such crimes by the Federal Government, under legislation to be enacted pursuant to Treaty, cannot trespass on states' rights because such legislation would by the very text of the Convention necessarily be both in conformity with the treaty-making power in furtherance of our foreign relations, and in full compliance with our constitutional system. It is pointed out by the opposition that the same act may be murder in state law and genocide in the federal and international fields. But concurrent criminal jurisdiction between the states and the Federal Government is common enough. Larceny in state law is frequently use of the mails to defraud in federal law. Examples are too common to require enumeration. The Supreme Court has seen no difficulty in international crimes being punished both by the Federal Government and the states (*United States* v. *Arjona*, 120 U. S. 379, 487).

The suggestion is subtly made that race riots and lynchings may thus come under federal power. Race riots are asserted by the opposition to be genocide. The example, we may assume, is chosen for political rather than legal reasons. In fact, there could be no jurisdiction to try perpetrators of a race riot on the charge of genocide save on proof that the acts were committed as part of a plan to destroy an entire religious, racial or national group.** The evidence required to establish such an "intent to destroy" would be enormous.*** The defendants would have all the constitutional safeguards at their disposal. If, indeed, there is evidence that the crime of genocide, with all the limitations of intent required, was committed, no one should disagree that the offender should be punished. Under the Convention prosecution could be had only in an American court. In almost all cases, state crimes would have been committed and the jurisdiction would be concurrent. As to jurisdiction for an international court, no such court exists. If it is hereafter created, its jurisdiction, so far as the

** The United States was responsible for the inclusion of an intent element to the crime of genocide. Economic and Social Council, Doc. No. E/623, at 11. Dr. Lemkin, the originator of Genocide Convention, has dealt with the question of intent in an article reprinted in the Congressional Record. He says, "It is not enough to kill persons belonging to a different race or religion, but these murders must be committed as a part of a plan to destroy the given groups. For example, those Turks who participated in annihilation of 1,200,000 Armenians are guilty of Genocide because they acted with the intent to destroy the Armenian Nation. . . . Where such specific intent is lacking there is no genocide." *Lemkin, The UN Genocide Convention*, printed as an Extension of Remarks of Representative Celler of New York in 95 *Cong. Rec. App.* A. 1270, A. 1271 (March 3, 1949).

*** *Simpson* v. *State*, 81 Fla. 292, State v. Schaefer, 35 Mont. 217, 88.

United States and other nations are concerned, will depend on future approval by the respective nations. Hence no international court will have jurisdiction over our citizens unless and until the President and the Senate so decide.

The alleged danger that the United States would become bound to the Convention even though other states would not, does not exist. The United States will not be bound under its terms until 20 states shall have ratified. It is not true that the only state which would be bound would be the United States because of the supremacy clause of its Constitution. If that were the case, the United States could never enter into multilateral treaties.** Excepting only for the Supreme Court "all other courts created by the general government possess no jurisdiction but what is given them by the power that created them, and can be vested with none, but what the power ceded to the general government will authorize them to confer" (*United States* v. *Hudson and Goodwin*, 7 Cranch [U. S.] 32). When Congress enacts a statute pursuant to the treaty, appropriate language may be used to define "mental harm" within the context of its drafting history and to clarify and amplify the essentials of the Convention where necessary.

FREE SPEECH AND PRESS

The opposition expresses concern lest the provision of Article III-c of the Genocide Convention—"direct and public incitement to commit genocide"—infringe upon freedom of speech and the press. In the noted case of *Frohwerk* v. *U. S.*, 249 U. S. 204, the Supreme Court answers this question. "The first amendment", says Justice Holmes (p. 206), "while prohibiting legislation against free speech . . . obviously was not intended to give immunity for every possible use of language. We venture to believe that neither Hamilton nor Madison . . . ever supposed that to make criminal the counselling of a murder . . . would be an unconstitutional interference with free speech."

Legislation by the nations to make the Convention effective will by the terms of the Genocide Convention necessarily be "in accordance with their respective constitutions." The scope of the offense is thus specifically subject to our own constitutional limitations, including the First Amendment. These limitations Congress will surely have in mind when drafting legislation. It has, moreover, never been thought that a treaty could override a special constitutional limitation—like the First Amendment.

Significantly, the proposal of the Soviet Union to penalize a failure to suppress propaganda by press and radio failed of adoption.

PLACE OF TRIAL FOR CITIZENS OF THE UNITED STATES

It has been argued that American citizens may, under the Genocide Convention, be tried "other than in the state or district wherein the crime shall have been committed." This is a misconception. There can be no jurisdiction in an international penal court unless that jurisdiction shall hereafter be recommended by the United Nations and specifically granted by action of the President and the United States Senate. The question as to whether such a court should be created has been referred by the United Nations to its fifteen nation international law committee.

A primary value of the Convention lies in the provision that its violators may include heads of state and public officials as well as private individuals. We have learned the tragic lesson from recent history that wholesale destruction of groups as a domestic crime may escape punishment when committed by the head of a state or its officials under the guise of legality. As a matter of domestic law, it is difficult to consider an "act of state" to be a violation of its own law. It is principally for that reason that this new international crime is being created. For if genocide attains the status of an international crime, the head of state, now immune from prosecution under his own domestic law, even if his government should change, could hereafter be punished for commission of the international crime. This is a point of immense significance which the opposition seems to overlook. Today's dictator cannot be unaware that tomorrow he may be over-

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**The argument has been made that only in the United States is a treaty the "Supreme Law of the Land." But Briggs, in *The Law of Nations—Cases, Documents, and notes* 432 (1938) cites a number of countries whose practices are similar to ours. He states that, "In many states the constitution or constitutional practice stipulates that international law—or at least treaties—are the law of the land. This is the practice of the United States, Switzerland, France and Belgium (with qualifications), Holland, Spain, Germany (Art. 4 of the Constitution of 1919), Austria, Estonia, Egypt, Argentina, many South American States, and possibly others."

thrown and that his acts of genocide will therefore become punishable crimes in his own country.

It has been well said that "National authorization of the commission of piratical acts could not free them from their internationally illegal aspects." (*Chas. Cheney Hyde, International Law*, 2nd Rev. Ed. 1945, Vol. 1, Sec. 231.)

Even though murder and assault are generally comprehended within the crime of genocide, the deterrent effect upon heads of state can flow *only* from the status of genocide as a crime cognizable in international law. This deterrent effect is as necessary in the field of international law as it is in the field of domestic penal law. The individual responsibility of the head of state to a court of a successor government, even though only in his own state, is a deterrent, the value of which may be incalculable in preservation of world peace.

REPLY TO OBJECTIONS TO TEXT OF CONVENTION

Aside from alleged constitutional objections raised by the critics, they have also put forward several contentions with respect to the language of the Convention. These should be briefly mentioned.

1. It is contended that use of the phrase "as such", as applied to the destruction of national, ethnical, racial or religious groups, creates an escape clause whereby these groups may be attacked on a different basis, without fear of punishment. It is odd that those who urge that the Convention goes too far assert in this argument that it does not go anywhere.

Be that as it may, the phrase "as such" limits the new international offense to cases where the proof of intent with respect to the group *as such* is clear. The objectors' argument, in short, is that the phrase permits a "loophole" of escape. Even if that were so, it is better than no offense at all. That some malefactors may escape is no argument for permitting all malefactors to escape. The words "as such" moreover, have a basis in the history of genocide. Nazism destroyed Poles, Slavs, Jews *as such;* ancient Rome destroyed the people of Carthage *as such;* the Ottoman Empire obliterated a million Christians *as such*. This is the international crime with which the Convention deals.

2. Criticism has been leveled against the provision in Article II of the Convention that the crime may be committed with intent to destroy "part of the group." The sound answer to this argument can be found in the statement our representative made before the General Assembly in Paris in December 1948 when he emphasized that "genocide is a denial of the right of entire human groups." The obvious construction is that the distinction is between an intent to destroy individuals and intent to destroy human groups.

3. There is objection to the use of the word "destroy" apparently in contradistinction to the word "kill." The use of the word "destroy" was necessary in the definition of the crime. Groups may be effectively destroyed without killing all members of the group; as, for example, Article II states:

> "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."

This proscribes the slow, deliberate, creeping prelude to death so vividly exemplified by the Nazi methods of recent years.

Similarly, "imposing measures intended to prevent births within a group" represents a recognition of possibilities of destruction through *forcible* prevention of births. Historically, segregation of the sexes to prevent births goes back to the Pharoahs in Egypt. In modern times, sterilization procedures are a much easier, more dangerous and even more destructive method. The measures would have to be forcibly imposed upon the particular group as such; the imposition would have to be with the intent of destroying, in whole or in part, the national, ethnical, racial or religious group.

There is also criticism directed against one of the proscribed acts, the "causing serious bodily or mental harm to members of the group", with the implication that "mental harm" is so broad a concept as virtually to make the crime of genocide incapable of definition. As an argument against ratification, it is unsound Serious mental harm would have had to be inflicted upon members of the group—again, as a group, with intent to destroy the group. The likely illustrations of this method of destruction are the use of stupefying drugs or torture. The Assembly was cognizant of the charges made by China of Japan's use of drugs to break down the Chinese population. The records of the deliberations of the 6th Committee and the letter of transmittal of the Convention by the Acting Secretary of State to the President of the United States (Dept. of State Bulletin

844,846, July 4, 1949), make it clear that such was the intention. Such deliberations are germane in any judicial consideration of the meaning of "mental harm."

NO RESERVATIONS NEEDED

If there were any possible danger that the particular language is not clear enough to define a crime within our own constitutional requirements, this can and doubtless will be remedied in the statute which the Congress will enact to make the treaty effective after 20 nations ratify. *That is why ratification need not be coupled with any reservations but only* the understanding in respect of Article IX as to which our representatives before voting for the Convention made the position of our country clear (see letter from James E. Webb to President Truman attached to the President's message of June 16th, 1949 to the Senate of The United States). To couple ratification with reservations would needlessly weaken our moral leadership. The various suggestions as to reservations can, so far as may be needed, be fully and appropriately dealt with in Congressional legislation. Such legislation, while serving to amplify or clarify provisions of the Convention if necessary, should not contain any departure from the Convention's clear and essential principles and purposes.

CONCLUSION

The Constitution commits us to an expanding concept of the law of nations. The same moral law which proscribes the murder of an individual proscribes the destruction of the group. As the General Assembly of the United Nations states in its resolution adopted unanimously on December 11, 1946.

> "Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings."

The General Assembly declared that physical extermination of human groups as such is of grave and legitimate international concern. The United States was a prime mover in recognition that genocide is a violation of international law. The Convention is not to be classed as one for protection of human rights but for the preservation of international peace. The arguments of the critics have neither historical, legal nor practical validity. Beyond the realm of legal discussion, the United States today has a position of moral leadership among the peoples of the world. That moral leadership must not be weakened. If the United States should fail to ratify this Convention it would lost its pre-eminent position of moral leadership. It would be failing the free peoples of the world at a time when they most need the support of this great nation.

It is our hope and belief that no American will ever commit a crime of genocide. It is only if we are willing to be included within the new Convention that other nations of the world will join. Our repudiation now would deeply undermine the moral position of our own country and the hopes of world peace.

On September 17, 1787, George Washington, who presided over the Constitutional Convention of that year published a letter for the people of the United States (1 Elliott's Debates p. 305 Ed. 1863 J. B. Lippincott & Co.). "We have now the honor," he wrote "to submit to the consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable. . . . The friends of our country have long seen and desired that the power of making war, peace and treaties . shall be fully and effectually vested in the general government of the Union. . . . It is obviously impracticable in the Federal government of these states to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all." These are the bed-rock principles, acted on steadfastly throughout the history of our country now challenged by those who oppose ratification.

It is respectfully urged that the Genocide Convention be ratified.

New York
January 19, 1950

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APPENDIX I

SOME OF THE AMERICAN ORGANIZATIONS SUPPORTING RATIFICATION OF GENOCIDE CONVENTION

American Federation of Labor
American Legion
American Jewish Committee
American Veterans Committee
Amvets
Bar Association of the City of New York
B'nai B'rith
Catholic Association for International Peace
Congress of Industrial Organizations
Federal Council of Churches of Christ
General Federation of Women's Clubs
Hadassah
Loyal Order of Moose
National Association for the Advancement of Colored People
National Conference of Christians and Jews
National Council of Catholic Women
National Council of Women
National Federation of Business and Professional Women's Clubs
Salvation Army
Synagogue Council of America
United Council of Church Women
Women's International League for Peace and Freedom

APPENDIX II

CONCERNING THE AMERICAN BAR ASS'N

In 1942 a number of leading American and Canadian lawyers began discussions "to increase the usefulness of international law." This led to meetings over a period of two years in which some 200 men participated. "Judges, practicing lawyers, professors, government officials and men of special international experience" collaborated. In 1944, the American Bar Association published and broadcast an historic pamphlet, the consensus of the group. The publication dated March 25, 1944, entitled "The International Law of the Future", came from the deliberations of such men as John W. Davis, John Foster Dulles, Manley O. Hudson, Robert H. Jackson, Philip C. Jessup, William Draper Lewis, Felix Morley, N. A. M. MacKenzie, Roscoe Pound, George Rublee, George W. Scott, Silas H. Strawn, John H. Wigmore, Quincy Wright, and many others, expert in the field of international law. Various principles were announced. Principles 1 and 2 declare:

(1) "Each State has a legal duty to carry out in full faith its obligations under international law, and it may not invoke limitations contained in its own constitution or laws as an excuse for a failure to perform this duty."

(2) "Each State has a legal duty to see that conditions prevailing within its own territory do not menace international peace and order. And to this end it must treat its own population in a way which will not violate the dictates of humanity and justice, or shock the conscience of mankind."

Commenting on these proposed principles, the following occurs (p. 35):

"A State cannot be free to permit conditions to prevail within its own territory, which menace international peace and order, and it cannot be free to treat any part of its population in such a way as to produce that menace. . . . The right of self-determination does not carry with it the right of any government to commit wholesale murder. . . ."

"Instances are numerous in which States have assumed international obligations with respect to treatment of their own nationals."

"The enunciation of this Principle seems particularly important at the present time, when shocking efforts are being made . . . to exterminate whole groups of human beings . . . the world must be assured that such atrocities . . . are not to be repeated."

The foreword to this A. B. A. publication declares that the "treatise is the most authoritative statement available . . . a community of views . . . by two hundred of the best informed minds we have in the United States and Canada." This publication affords a striking contrast to the views of the lawyers who now oppose ratification of the Genocide Convention.

The American Bar Association has continually urged an expanding concept of the jurisdiction of the International Court. At Atlantic City, New Jersey, on October 28, 1946, at the 69th Annual Meeting of the A. B. A. Assembly, Harold J. Gallagher, then Chairman of the Resolutions Committee (now A. B. A. President) presented Resolution I by Kenneth Teasdale of Missouri, asking the U. S. Senate to "reconsider the subject of the Declaration of Compulsory Juris-

ci tion, and should eliminate therefrom the right of determination by the U. S. as to what constitutes matters essentially within the domestic jurisdiction."

On October 30, 1946, the House of Delegates of the A. B. A. unanimously urged "*active, united and wholehearted support of the United Nations and its agencies*"; also that "*the people of the United States should unitedly and steadfastly support the foreign policy of our country.*" (32 A. B. A. Journal, p. 871.) A majority of the lawyers there present deplored the Connally Amendment, adopted by the U. S. Senate, which refuses U. S. consent to compulsory jurisdiction of the World Court (32 A. B. A. Journal, p. 873. See also resolution adopted by the A. B. A. Assembly, 33 A. B. A. Journal, p. 175).

The report of February 24, 1947 of the Special Committee for Peace and Law through United Nations of American Bar Association (p. 11) "your Committee is strongly of the opinion that at this juncture the Association should again speak out for a united and undivided American support for the United Nations."

On February 25, 1947, at Atlantic City (33 A. B. A. Journal, 249), the House of Delegates of the A. B. A. put itself "strongly on record in favor of withdrawing from the American Declaration . . . the reservation or condition attached by the Senate's adoption of the Connally amendment of the Morse Resolution (5 Res. 196). . The Association aligned itself steadfastly in support of its historic position as to the jurisdiction of the World Court and American leadership in behalf of the Court."

The resolution appears in full on p. 249. It sets forth in detail its objection to the Connally reservation and concludes by declaring that

"The Association for the fulfillment of the objectives which it has strongly urged for many years . . recommends to the Senate . . . the filing of a further declaration which shall not contain the reservation or condition to which the foregoing resolutions relate."

In 33 A. B. A. Journal, pp. 430 et seq. (May, 1947) continued efforts are urged by A. B. A. for withdrawal of the Connally reservation. "The present session of Congress is none too soon for the Senate . . . to reconsider" etc., etc. . . . "*and to take action that will align the U. S. in full support of international law and the World Court.* . . . Your Committee will urge upon members of the Senate . . . withdrawal of the . . . Connally Amendment."

In September, 1948 Mr. Frank S. Holman, then elected President of the A. B. A. (34 A. B. A., pp. 757–60) urged in his inaugural address "international association, organization and cooperation for peace and law . . . *undivided support for the United Nations and the World Court . . extending the obligatory jurisdiction of the Court.*"

At the 71st Annual Meeting of the A. B. A. at Seattle, September, 1948 (2104 members present, 34 A. B. A. 859) the Section on International Law presented a resolution unanimously approved by it, supported also by the Section on Criminal Law, declaring that the effective administration of international law requires individual responsibility for its violations. It asked the American Bar Association to recommend that the United Nations "take appropriate action to establish sufficient tribunals . . to effectuate the above principles." Action on this resolution was deferred.

AFTER RECESS

Senator McMAHON. We will open this afternoon with a brief statement by Mr. Rosenberg, who was the original chairman, and who is now cochairman of the United States Committee for the United Nations Genocide Convention.

STATEMENT OF JAMES N. ROSENBERG, NEW YORK, N. Y., COCHAIRMAN, UNITED STATES COMMITTEE FOR A UNITED NATIONS GENOCIDE CONVENTION

Mr. ROSENBERG. Mr. Chairman, I have nothing to add to Judge Patterson's magnificent statement this morning of the purposes of this committee of which I am one of the chairmen.

Senator McMAHON. Mr. Rosenberg, that was a very excellent statement in itself. I thank you very much, indeed.

Mr. ROSENBERG. Thank you.

Senator McMAHON. Now we have Mr. Dana Converse Backus, who is substituting for Mr. Adolf Berle, Jr., who had to leave to attend a funeral ceremony.

STATEMENT OF DANA CONVERSE BACKUS, VICE CHAIRMAN OF THE INTERNATIONAL LAW COMMITTEE, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mr. BACKUS. Mr. Chairman and members of the committee, Mr. Berle wishes me to express his regrets that he had to leave and was unable to stay this afternoon to present the point of view of the Association of the Bar of the City of New York. Mr. Berle had to attend and participate in the ceremonies of the funeral of a very old friend of the Quaker faith.

Mr. Berle, as you know, is the chairman of the international law committee of the Association of the Bar of the City of New York, and I am its vice chairman.

NEW YORK BAR IN FAVOR OF THE CONVENTION—TWO RESOLUTIONS

I would like, Mr. Chairman, to present to you two resolutions, one for each member present, of the Association of the Bar of the city of New York, in favor of the Genocide Convention. The first of these resolutions approves the convention and recommends that the United States ratify the convention. The second resolution is of interest particularly because of the course the debate ran this morning, with some stress being laid as a possible objection on the fact that the Genocide Convention does not include genocide committed against economic groups.

OMISSION OF KILLING OF POLITICAL AND ECONOMIC GROUPS NO SANCTION FOR SUCH ACTS

The international law committee studied that problem and on its recommendation, the Association of the Bar of the city of New York resolved that in approving the convention, the association does not construe the omission of political, economic, and other groups from the definition of genocide as any indication of the desirability or advisability of such omission as direct or indirect sanctions of the commission of the acts therein set forth with respect to such other groups.

I might say that that conclusion was reached after some study of the authorities: a line of authorities beginning with Blackstone and working down through to the decisions of the Court of Appeals of the State of New York. The purport of the authorities being that when one was dealing with an area of common-law crimes and international criminal law, which at this stage is very much in the state that common law was in Blackstones' time, that the definition by statute or convention of a particular international crime or common-law crime does not exclude from the criminal area other acts not included within the particular convention.

Thus I might say there is sound legal authority for starting with fundamentals, with things that we can all agree on, with genocide as defined in this convention, and progressing with later steps to other and perhaps more controversial common-law crimes.

INTERNATIONAL JUDGEMENT AS TO SUFFICIENCY OF UNITED STATES STATUTES

I would like to refer briefly to another point raised this morning because it was another matter debated in our association, and that involves the right of some international body, in this case the International Court of Justice, to pass upon the action taken in the United States as to the sufficiency of American statutes in carrying out the Genocide Convention. The suggestion was made, I don't believe very seriously, that there perhaps could be a reservation saying that the United States Congress would be the sole judge of the sufficiency of such action.

A RESERVATION TO THAT EFFECT IS NOT DESIRABLE

Gentlemen, I hope that reservation will not be made. One of the reasons that the association of the bar took this stand in favor of the convention was that as a matter of diplomatic history the United States had from time to time objected to actions in other countries which were in the nature of the present convention of genocide. Rumanian and Czarist persecution of the Jews, Turkey's persecution of the Armenians, for example. If we put in a reservation that we are the sole judges of our carrying out the convention of the crime of genocide, what happens if we care to make a protest concerning the action of some other nation? That is no idle possibility, gentlemen, because right now in the Balkan satellite states of Europe conditions are brewing which may result in genocide against a religious group, the religious group of the Catholic faith, and perhaps of other faiths, in the satellites.

CONGRESS HAS THE POWER ALREADY

I wish to refer just briefly to a point which was made this morning, and which is of fundamental importance, because we are dealing here with a convention on genocide, which is in an area that is already part of the Federal field of power. We do not have to worry about State-Federal relationships because already the Constitution provides that Congress shall have the power to define and punish piracy and felonies committed on the high seas and offenses against the law of nations. Obviously if Congress has that power as a domestic matter, it may exercise that power also in connection with the treaty power.

In conclusion, I would like to leave with you just one thought, and I know it is a thought that the Association of the Bar of the City of New York is heartily in accord with, and that is that we have used the treaty power of the United States to protect migrating birds, and it is now time to use the treaty power of the United States to protect men.

Thank you, sir.

Senator McMahon. Thank you very much, indeed. That is a very helpful statement.

Mr. Backus. Thank you, sir.

(The matter referred to is as follows:)

COMMITTEE ON INTERNATIONAL LAW, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, NEW YORK, N. Y., APPROVAL OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Resolutions adopted by the Association of the Bar of the City of New York at a stated meeting on March 8, 1949:

"*Resolved*, That this association approves the Convention on the Prevention and Punishment of the Crime of Genocide and recommends that the United States ratify the convention: Further

"*Resolved*, That, in approving the proposed convention and recommending its adoption, this association does not construe the omission of political, economic, and other groups from those enumerated in the definition of genocide contained in article II thereof as any direct or indirect indication of the desirability or advisability of such omission, or as direct or indirect sanctoning of the commission of the acts therein set forth with respect to such other groups."

A. A. BERLE, Jr., *Chairman.*

Senator MCMAHON. The next witness is Dr. Samuel McCrea Cavert, general secretary of the Federal Council of Churches of Christ in America.

STATEMENT OF REV. SAMUEL McCREA CAVERT, GENERAL SECRETARY OF THE FEDERAL COUNCIL OF CHURCHES OF CHRIST IN AMERICA

Rev. CAVERT. Mr. Chairman and members of the commitee, I am Samuel McCrea Cavert, 297 Fourth Avenue, New York. I am, as the chairman has just said, the general secretary of the Federal Council of the Churches of Christ in America, which is an official federation of 27 national denominations, Protestant and Eastern Orthodox, with a combined membership of 29,000,000 communicants. I give my testimony under instructions from the executive committee of the council, which on May 17, 1949, unanimously adopted the following statement:

COUNCIL RESOLUTION FAVORING THE CONVENTION

The Federal Council of the Churches of Christ in America rejoices in the adoption by the General Assembly of the United Nations of the Convention on Prevention and Punishment of the Crime of Genocide. In this action the United Nations has sought to place the deliberate and systematic destruction of national, ethnic, religious, and racial groups under the ban of international law.

We believe the convention outlawing genocide is in accord with the Christian conception of the dignity and worth of men as children of the Heavenly Father, and marks a significant advance of international law where it is much needed to protect religious, national, and racial groups from destruction.

We request the State Department promptly to submit and the Senate immediately to ratify this convention and by such action to hasten the day when genocide will fall under the legal as well as the moral condemnation of the civilized world.

CHURCHES INSIST THAT GENOCIDE BE BANNED

The conscience of the Christian community has been outraged by the mass destruction of entire groups of the human family. In our own day 6,000,000 Jews and 2½ million Poles were exterminated under the Nazis. The churches are no longer content with issuing moral protests against such odious crimes and proclaiming general principles of decent respect and justice for all peoples. The leaders of the churches are now insisting that genocide shall be placed under a def-

inite ban of international law. They believe that this end can be achieved through the convention now before this committee. On the basis of wide contacts with thoughtful people in all denominations included in the Federal Council I am convinced that though they have many ecclesiastical differences among themselves, they are united in their desire to see the Senate ratify this convention.

As illustrative of scores of statements which might be cited as evidence of the widespread concern of the churches I quote the following:

From Bishop James C. Baker of the Methodist Church, Los Angeles area:

With all the moral conviction and passion that I possess I urge immediate action by our Congress ratifying the outlawry of what the General Assembly called the "odious scourge" of genocide. Certainly I can speak for my constituency in urging immediate action.

From Bishop John W. Bentley, vice president of the national council of the Protestant Episcopal Church:

I hope the Senate will take immediate action ratifying the Convention on the Prevention and Punishment of the Crime of Genocide.

From Rev. Dr. Charles C. Ellis, Huntington, Pa., moderator of the Church of the Brethren:

I sincerely trust our Government will strongly support the humanitarian convention relative to the inhuman and unchristian crime of genocide.

From Rev. Dr. L. W. Goebel, of Chicago, Ill., president of the Evangelical and Reformed Church:

The Evangelical and Reformed Church confidently awaits the speedy submission to and ratification by the Senate of the Genocide Convention. Failure to take such action would appear to Christian people as a condoning of mass murder.

From Miss Helen Kenyon of New York, moderator of the general council of the Congregational Christian Churches:

It is hard to conceive upon what ground this convention could be opposed. Christianity, Americanism, common humanity, every decent social impulse calls for the ratification of it.

From Dr. Charles T. Leber, administrative secretary, board of foreign missions and overseas interchurch service, Presbyterian Church U. S. A.:

I believe ratification by the Senate of the Genocide Convention would be hailed with thanksgiving by the Christian thinking people of the United States and by the religious community generally.

From Bishop G. Bromley Oxnam of the Methodist Church, New York area:

I strongly urge ratification of the Genocide Convention by the United States Senate. I earnestly hope such action may be taken promptly for the encouragement thus given to other nations to ratify this convention.

From Rev. Dr. F. P. Stocker, of Bethlehem, Pa., president of the Conference of the Moravian Church in America:

The Moravian Church in America, Northern Conference, desires to place on record its official support of the United Nations convention outlawing genocide. We believe prompt action by the Senate will give encouragement to other nations where this matter is under consideration.

From Rev. Dr. John A. Tate, of Richmond, Va., president of the International Convention of the Disciples of Christ:

I urge the Senate of the United States to ratify the convention drafted by the United Nations.

UNITED STATES HESITATION IS UNTHINKABLE

Our churches rejoice in the knowledge that our Government took a leading part in the negotiation of this convention. The United States delegation to the United Nations was supported by the petitions and prayers of the people of our churches when, on December 9, 1948, it joined with 54 other nations in voting approval of this convention by the General Assembly. To our mind it is unthinkable that the United States, at the precise moment when the General Assembly is urging speedy ratification of this convention shall itself hesitate to take such action. It is our view that the prestige of the United States within the family of nations would be seriously compromised if the Senate were to withhold its advice and consent to the President's ratification of this convention. More than that, the consequences of such action would be to diminish the moral influence of the United Nations and to impair its usefulness as an institution for international peace and security. We regard it as a matter of high consequence and urgency that the Senate should ratify this convention and by this action help to invest the United Nations with that moral authority which is essential to the maintenance of international order.

Thank you, Mr. Chairman.

Senator McMahon. Are there any questions of the doctor?

If not, thank you very much, indeed, Doctor.

Rev. Cavert. Thank you.

Senator McMahon. The next witness is Mr. Frank Goldman, the national president of B'nai B'rith, of Lowell, Mass.

STATEMENT OF FRANK GOLDMAN, NATIONAL PRESIDENT, B'NAI B'RITH, LOWELL, MASS.

Mr. Goldman. Mr. Chairman, I deeply appreciate the opportunity which has been extended to me as president of B'nai B'rith to appear before your committee and to urge the prompt ratification of the Genocide Convention.

May I say that B'nai B'rith, the oldest and largest Jewish service organization in this country, was founded in the United States in 1843. After more than a century of existence, B'nai B'rith has at present approximately 325,000 members organized in lodges and chapters throughout the United States.

GENOCIDE A MILESTONE OF CIVILIZATION

When, without a dissenting vote, the General Assembly of the United Nations approved the Genocide Convention, its action met with almost universal applause. The Genocide Convention was regarded as an historic milestone in the effort of civilized people to bring international law and practice abreast of the conscience of mankind. Our great country has always been in the forefront of this vital struggle. We cannot now abandon the fight, for it is in our

security interests as well as in the interest of justice and freedom. We must retain the faith of freedom loving and democratic peoples throughout the world. We must never forget that the mere signing of this document will not afford immediate and full protection to peoples in certain areas of the world. Nevertheless, such action by ourselves and other free peoples of the world will bring nearer the day when all peoples will demand and receive the protection of the international rule of law. We owe it to ourselves and posterity to make every effort to achieve this goal.

UNITED STATES ADHERENCE A MATTER OF ENLIGHTENED SELF-INTEREST

Genocide—the mass destruction of religious, racial, and other minorities—has, unfortunately, occurred throughout history. But the magnitude and appalling brutality of the Nazi murder of 6,000,000 Jews, several million Slavs, and other members of minority groups so shocked the human conscience as to leave the civilized world with a firm determination to invoke the full force of international law against possible recurrences. Moreover, Hitler taught the world that genocide is not merely the crime most abhorrent to all conscience and morality, but that it also constitutes a direct threat to all peace-loving nations. We have now learned that the merciless destruction of minority groups in one country is only the forerunner of aggressive assault against all peace-loving peoples everywhere. The ratification of the Genocide Convention by the United States is, therefore, more than an expression of our great humanitarian tradition; it is also a matter of enlightened self-interest.

PRECEDENTS FOR UNITED STATES ADHERENCE

It is important to bear in mind that it is not a new thing in American history for our Government to take a direct and active interest in the mistreatment of minority groups in other countries. The fact is that for more than a hundred years the United States Government has on many occasions directly intervened with foreign governments to protest persecution of racial and religious groups in other countries. Let us recall a few instances. President Van Buren's Secretary of State in 1840 intervened with the Sultan of Turkey on behalf of the Jews of Damascus and Rhodes. In 1872 our Government joined with other governments in protesting to the Government of Rumania with respect to pogroms and other atrocities against Jews. Again in 1902, Secretary of State John Hay protested against the anti-Jewish persecutions in Rumania. In 1898 President McKinley, in his message to the Congress concerning our intervention in Cuba, clearly stated that this country had a duty to put an end to the barbarities existing there. Coming down to more recent history, our Government and its allies, at the Nuremberg war-crime trials, held that genocide which was connected with preparing or waging war was an international crime. Last year our Government took significant measures to express its profound distress at the treatment accorded Catholic and Protestant church leaders and their followers in Hungary, Bulgaria, and Rumania.

The proposed Genocide Convention will furnish a more effective legal means for carrying out this traditional policy of the United States. The failure of the United States to ratify the Genocide Convention could only be considered by the rest of the world as a retreat by our country from the high moral, political, and legal principles which we have always espoused and from our frequently expressed determination to make the United Nations an effective instrument for world peace.

OBSERVATION ON THE BAR ASSOCIATION OPPOSITION

With respect to the legal aspects of the proposed Genocide Convention, I wish only to state that some of the most eminent international lawyers in this country believe that the convenion is fully consistent with the principles of our constitutional and legal system. I refer specifically to the considered opinions of the Association of the Bar of the City of New York and of the section of international and comparative law of the American Bar Association, as well as the arguments in support of ratification of the Genocide Convention that are being expressed to this committee by other distinguished members of the American bar. It is not unusual for lawyers to differ. I am aware of the fact that a group of lawyers in the American Bar Association has expressed a different point of view. With due deference to them, however, I respectfully submit that their opinion should not commend itself to this committee or to the Senate as a whole. Surely the designation of genocide as an international crime, like piracy or the slave trade, particularly where the principal, if not exclusive, legal-enforcement machinery is left to the sovereign states, does not threaten traditional American constitutional concepts.

I have great respect for the integrity and the constitutional acumen of my fellow lawyers in the American Bar Association who oppose ratification of the Genocide Convention. I cannot help wondering, however, whether in this instance their undoubtedly honest views do not unconsciously—at least in the case of some of them—have their origin in a political allergy to the development and growth of international cooperation and law in matters now deemed of world concern.

GENOCIDE IS OF INTERNATIONAL CONCERN

I believe that the central controversial issue involved in the consideration of the Genocide Convention is whether it is in the interest of world peace and security that such admittedly heinous offenses as genocide be regarded as matters of international concern or be regarded as solely domestic questions. The USSR and its satellite bloc are the strongest proponents, both in the United Nations and elsewhere in the field of international relations, of the view which would extend to the widest possible extent, the areas to be deemed within the domestic jurisdiction of a state and not a matter of international concern. The Soviet bloc has recently given expression to this point of view in the trials and treatment of religious leaders and religious groups in Hungary, Bulgaria, and Rumania.

Senator McMAHON. Also in Russia itelf, recently.

Mr. GOLDMAN. I should think so.

Senator McMahon. According to the reports that I have read, they have been conducting a Jewish persecution of their own.

Mr. Goldman. The United States was the leader in proposing the Charter provisions which gave the United Nations the task of fostering human rights and freedoms. We and the other signatories of the Charter thereby acknowledged a certain measure of responsibility. In my opinion, the great record and tradition of the United States in dealing with minorities and in protecting human rights more than counterbalance the likelihood of incidents arising in the United States which would constitute a valid basis for international concern. What the critics of the Genocide Convention seem to fear is that nations and groups inimical to the American system might raise unjustified complaints regarding our treatment of minority groups. But such nations and groups can do that regardless of whether the Genocide Convention is ratified by the United States.

On the other hand, experience shows that we cannot have the same feeling of confidence that governments and peoples in some other areas of the world will deal fairly with minorities and not commit acts of genocide. We increase our own ability to preserve world peace and security if we strengthen instruments of international control such as the United Nations. It is through them that we can hope to bring to bear the pressures of world-wide opinion and action to eliminate those great injustices and mass murders, which undermine the peace of the world and so frequently are part and parcel of developing programs of world aggression.

REFUSAL TO RATIFY, A RETURN TO ISOLATION

It would indeed be odd, in the kind of world in which we live, if we were to permit a political or emotional allergy to international cooperation to take strong root in our country again. If we were to reject so modest and conventional an extension of our international obligations on so noncontroversial a subject as genocide, it would suggest that we were shifting our position on world affairs to a degree which must give our friends pause.

I respectfully urge that the Senate would be acting in the American interest, would be furthering our traditional struggle against injustices, and would be helping to preserve world peace and security, when it ratifies the Genocide Convention.

Senator Lodge. Mr. Chairman.

Senator McMahon. Senator Lodge.

CONVENTION VITAL TO THE UNITED STATES IN THE COLD WAR

Senator Lodge. I think there is great value in the contention that you make. Not only has this convention substantial merit of its own, but it has a symbolic value; and having gotten this far with it, if we do not go through to complete the rest of the course, it will do a serious damage to the position of the United States in the current cold war. Is that not what you believe?

Mr. Goldman. Yes. I believe that millions of people throughout the world who have faith in the moral leadership of our country would perhaps lose some of that faith.

Senator LODGE. Would that not be grist to the mill of those elements in the world that do not like the United States? Would they not make the most of that?

Mr. GOLDMAN. I think so, Senator, and I rather think I have said that.

Senator LODGE. Thank you. You have given us an excellent statement.

Senator MCMAHON. Are there any other questions?

Senator PEPPER. That was an eloquent statement, Mr. Goldman.

Mr. GOLDMAN. Thank you.

Senator MCMAHON. We have next Mr. Jacob Blaustein, president of the American Jewish Committee.

STATEMENT OF JACOB BLAUSTEIN, PRESIDENT OF THE AMERICAN JEWISH COMMITTEE

Mr. BLAUSTEIN. Mr. Chairman and members of the committee, I am appearing on behalf of the American Jewish Committee to urge the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide.

The American Jewish Committee is the oldest Jewish organization in the United States devoted to the combating of bigotry, the advancement of democratic practices in this country and the protection of the civil and religious rights of Jews throughout the world. Since its inception in 1906, the committee has subscribed to the principle that the rights of any group are secure only in a democratic society which guarantees the dignity and equal rights of all citizens. Such a society can no longer be maintained with casual disregard of events in other countries. Today, no nation can insulate itself against the impact of terrorism. Outbreaks of violence anywhere in the world may all too soon flare into war.

Therefore, we are concerned with genocide because genocide is a crime against humanity, which the civilized world must eradicate in the cause of self-preservation, and which can be eradicated only by the nations of the world acting in concert.

SIX MAJOR CONSIDERATIONS OF RATIFICATION

In advocating ratification of the convention, the American Jewish Committee wishes to present six major considerations:

First, and dwarfing all other considerations, is the fact that genocide is the most appalling crime in all recorded history. It was practiced in centuries prior to the recent excesses of the Nazis, and can occur again.

Second, genocide destroys economic, cultural, and spiritual values and debases mankind.

Third, genocide is a threat to the peace of the world.

Fourth, the present convention, when ratified, will serve as an effective deterrent.

Fifth, the Genocide Convention not only fills a gap in international law, but is fully consistent with international legal precedent and with American constitutional principles.

Sixth, there is need for prompt United States action on this question in order to discharge our responsibilities as the foremost advocate of international morality.

These matters are dealt with fully in our written presentation which I am submitting to you for the record. I should like to touch only on a few of these points in the brief period at my disposal.

MOST APPALLING CRIME

As to point No. 1, that genocide is the most appalling crime in all recorded history: The slaughter of almost 9,000,000 civilians by the Nazis within the span of 12 years is unique in history only by virtue of magnitude. Through the centuries, tyrants have sought, with varying degrees of success, to exterminate entire groups of innocent people.

Thus, the Nazi policy was merely a machine-age version of a strategy that dates back to the destruction of Carthage 2,000 years ago, when the Roman legions, not content with mere military conquest, brutally wiped an entire ethnic group from the face of the earth.

Two centuries later, when Nero sent thousands of Christians to the lions and the stake, he set the pattern for Hitler's treatment of the German Jews.

Other instances of genocide have occurred throughout history. In our own century, we have witnessed the Russian pogroms of 1903 and 1905, the Turkish massacres of the Armenians in 1915, and the wholesale slaughter of Christian Assyrians in Iraq in 1933.

All of these massacres were horrors from which the mind recoils; and yet they were surpassed in brutality by the excesses of the Nazis.

Justice Robert H. Jackson, in his opening address before the Nuremberg tribunal, said:

> History does not record a crime ever perpetrated against so many victims or one ever carried out with such calculated brutality.

Depositions of former Gestapo officers at the Nuremberg trials revealed that 4,000,000 Jews were murdered in the Nazi death camps, while 2,000,000 more were killed in other ways. The methods of destruction, subtle at first, started with imprisonment in concentration camps, torture, starvation, overwork, and deliberate exposure to disease. Eventually every weapon of extermination was used: Mass machine-gunnings and hangings, compulsory abortion, experimental surgery, injection of chemicals and, finally, the bloodless efficiency of the gas chamber.

The Jews were by no means the only victims of Nazi genocide. Large numbers of Catholic and Protestant clergymen were martyred and the religious sect of Jehovah's Witnesses was almost completely annihilated. What happened to Poland is another case in point.

Polish leadership groups—Government officials, priests, judges, educators, and others—were either executed or eliminated by imprisonment or deportation. Hundreds of thousands of Poles were shipped to Germany as slave laborers, while the rest of the population was kept on a near-starvation diet. This not only reduced the birth rate, but also reduced the survival chances of Polish infants.

These diabolical techniques were used in every country occupied by the Nazis. In fact, the victims of genocide actually exceeded in number the total casualties caused by the Germans on the field of battle.

GENOCIDE DESTROYS CULTURAL VALUES

As to point No. 2, genocide destroys cultural values: Beyond the appalling loss of life, the crime of genocide brings with it widespread destruction of cultural values. As mankind is degraded and destroyed on a mass scale, human skills, and talents wither and die; scientists, technicians, educators, artists, and administrators of irreplaceable ability are butchered; their manuscripts and artistic works disappear; libraries, archives, and art treasures are wantonly destroyed. The world's wealth consists of the contributions made by its component cultures, and all suffer when the fruitfulness of any group is diminished.

GENOCIDE DESTROYS ECONOMIC VALUES

Further as to point No. 2, genocide destroys economic values: In addition, there is the economic loss. Genocide is always accompanied by looting and destruction on an enormous scale. Properties worth billions of dollars were lost in consequence of the Nazi extermination policies; and although it is difficult to estimate the losses in exact figures, there is no doubt that they contributed substantially to the general postwar improverishment of Europe.

Economically, the impact of genocide in any country is felt elsewhere. The existence of slave-labor camps depresses labor standards in other countries. Trade relations with the victims are, of course, severed. Immigration policies must be adjusted to provide asylum for those who escape death by flight to other lands. Moreover, the cost of rehabilitation of survivors is a staggering burden, as any American taxpayer will testify.

GENOCIDE DESTROYS SPIRITUAL VALUES

Still further as to point No. 2, genocide destroys spiritual values: Above and beyond any tangible considerations is the spiritual havoc brought about by genocide. Here the victims are not only those who suffer abuse, but also those who inflict it.

Group extermination is invariably preceded by a series of lesser outrages, starting perhaps with social ostracism and then running the gamut of economic stanctions, political disenfranchisement and terrorism. Those who manage to flee must live like hunted criminals until they find refuge in another land. Those who remain, and somehow escape annihilation, must live in unspeakable degradation, herded like beasts in concentration camps and driven into slave labor. Family ties are fractured. Husbands are separated from wives; children from parents. Forced prostitution and compulsory sterlization not only destroy the "biological substance" of a group, but also its moral fiber.

Such excesses cannot be committed without involving great numbers of people as partners in crime. To prepare the masses for this complicity, rulers bent on genocide invariably launch intensive propaganda campaigns, appealing to man's most shameful instincts. These campaigns are diabolically calculated to provide hysteria, mob violence, and a reversion to barbarism.

When millions are thus led to ignore the dictates of conscience, to renounce the teachings of religion, to betray the loyalty of friends and fellow citizens, there occurs a spiritual break-down that may take

years, even decades to repair, meanwhile imperiling the stability and peace of the entire world.

GENOCIDE A THREAT TO WORLD PEACE

As to point No. 3, genocide is a threat to the peace of the world: The fanaticism engendered by these campaigns of hate cannot be confined to national boundaries, as the Nazi experience has established. The German assault against the alleged enemy within prepared the psychological ground for equally murderous attacks against foreign nations. Special army and police troop units—organizations of professional torturers and murderers—bound to one another by common guilt, were built up during the process. These legalized bands of criminals, trained for genocide at home, were well equipped for the inhuman brand of warfare they waged abroad.

The committing of genocide and the waging of aggressive war have frequently gone hand in hand.

Unfortunately, international society for thousands of years has observed the law of the jungle. Strong nations have trampled on the weak. Tyrants who have abused their subjects have ever been ready to oppress their weaker neighbors.

Now, through the medium of the United Nations, we hope that we may elevate the standards of international justice to the level of behavior we observe within our own borders. The convention against genocide will be a significant landmark denoting mankind's passage from the jungle.

RATIFICATION WOULD DETER RECURRENCE OF GENOCIDE

As to points No. 4 and No. 5: With respect to the facts that the ratification of the convention would serve as effective deterrent against recurrence of genocide; and that such ratification is fully consistent with American constitutional principles, I respectfully refer you, because of the pressure of time, to our written memorandum.

I want to say this, that I and my committee aline ourselves in these aspects, and particularly in the legal aspect, with the point of view that was expressed here this morning by the Solicitor General and by Judge Patterson.

Senator PEPPER. Would you mind if I interrupt a minute Mr. Chairman?

Senator MCMAHON. Go right ahead, Senator Pepper.

Senator PEPPER. I am interested in the point you are making, because the Nuremburg trials were considered by some as making law that did not previously exist. Some said there was no authority in the tribunal to adjudicate the offenses that they considered there as a violation of international law because there had not been a violation of international law prior to the time they were declared to be so by the tribunal.

Now, this convention clearly and expressly defines genocide as a violation of international law, and under the ban of international law. So if any nation should hereafter, as a part of aggressive war—or the leaders of a nation—commit either during peace or during war, genoside, and they should after an aggressive war that they may have lost

be tried by another international tribunal for aggressive war and crimes against humanity, nobody would be able to argue that genocide in peacetime, which was a part of the war, would not be an international crime for which they would be guilty.

Mr. BLAUSTEIN. Senator, that fills the gaps, and that is the crime that was committed up to the time of the war. It does just that—it fills the gap. It takes away the excuse on which the guilty relied in the Nuremburg trials.

NEED FOR PROMPT UNITED STATES ACTION

And finally, as to point No. 6—there is need for prompt United States action: The United States, by continual devotion to justice and humanity, has earned a reputation as the leader of world morality. This reputation was heightened by the labors of the members of our delegation to the United Nations, who played an influential role in formulating the Genocide Convention and in securing its adoption. It would have been most fitting for our country to have been the first to ratify this great measure. Unfortunately, that opportunity has passed. The parliaments of seven nations have already given official endorsement to the convention. Our international prestige will suffer if we delay longer.

The eyes of the world are upon us at this moment, watching to see if we will continue to build the temple of peace which is slowly being fashioned out of respect for law between nations. Should we, by any mischance, fail to act, we would shake this temple of peace to its very foundations.

We must continue to assume our responsibility for world leadership. We must assert the profound American conviction that this world cannot survive half free and half subjected to oppression and slaughter.

Gentlemen, I do submit to you respectfully and sincerely that we must without delay ratify the Genocide Convention.

Thank you, Mr. Chairman.

Senator MCMAHON. Mr. Blaustein, you have very succinctly put together the various points in your statement. Our stenographer has taken them down, and I will leave the option with you. Would you prefer to have it in the record as you delivered it, or would you prefer to have your written statement appear?

Mr. BLAUSTEIN. Mr. Chairman, even though I am president of the American Jewish Committee, I don't make all the decisions. I think I might be considered remiss by our people, who have worked hard on the longer statement; for instance, the legal points, the thing that the American Bar Association is asserting. We have answers for those points. If you don't mind, if it is not burdening the record too much, I would like to submit the longer statement.

Senator MCMAHON. That is perfectly all right. It is very well done and very well written, and I want to congratulate you on the way you summarized it. But I think it would be well if the whole thing were in the record.

(The statement referred to is as follows:)

TESTIMONY PRESENTED BY JACOB BLAUSTEIN, PRESIDENT OF THE AMERICAN JEWISH COMMITTEE IN FAVOR OF THE RATIFICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF GENOCIDE

Gentlemen, I am appearing on behalf of the American Jewish Committee to urge the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide. The American Jewish Committee is the oldest Jewish organization in the United States devoted to the combating of bigotry, the advancement of democratic practices in this country and the protection of the civil and religious rights of Jews throughout the world. Since its inception in 1906, the committee has subscribed to the principle that the rights of any group are secure only in a democratic society which guarantees the dignity and equal rights of all citizens. Such a society can no longer be maintained with casual disregard of events in other countries. Today, no nation can insulate itself against the impact of terrorism. Outbreaks of violence anywhere in the world may all too soon flare into war.

Therefore, we are concerned with genocide not only because 6,000,000 Jews were recently murdered, but also because genocide is a crime against humanity, which the civilized world must eradicate in the cause of self-preservation, and which can be eradicated only by the nations of the world acting in concert.

It is a tragic paradox that, whereas the murder of a single individual has long been recognized as a crime, punishable in every civilized country, there has never been a law against mass murder. To close this incredible gap, a gap through which millions have literally plunged to death through the centuries, the General Assembly of the United Nations, to its enduring credit, has adopted the convention against genocide; adopted it by unanimous vote. Years of devoted effort and months of persuasive statesmanship on the part of our own United States delegation went into this historic measure.

Now it remains for the Senate to bring these labors to fruition, to give this convention the official approval of the United States so that, by our example, other nations may be encouraged to speed ratification and at last bring the scourge of genocide within the control of international law.

In urging that you act favorably on the President's recommendation that the Senate ratify the genocide convention, the American Jewish Committee wishes to present six major considerations:

First, and dwarfing all other considerations, is the fact that genocide is the most appalling crime in all recorded history. It was practiced for centuries prior to the recent excesses of the Nazis, and can occur again.

Second, genocide destroys economic, cultural, and spiritual values and debases mankind.

Third, genocide is a threat to the peace of the world.

Fourth, the present convention, when ratified, will serve as an effective deterrent.

Fifth, the genocide convention not only fills a gap in international law, but is fully consistent with international legal precedent and with American constitutional principles.

Sixth, there is need for prompt United States action on this question in order to discharge our responsibilities as the foremost advocate of international morality.

History records no greater crime than genocide

First let me state that the slaughter of almost 9,000,000 civilians by the Nazis within the span of 12 years is unique in history only by virtue of magnitude. Through the centuries tyrants have sought, with varying degrees of success, to exterminate entire groups of innocent people.

Thus, the Nazi policy was merely a machine-age version of a strategy that dates back to the destruction of Carthage 2,000 years ago, when the Roman legions, not content with mere military conquest, brutally wiped an entire ethnic group from the face of the earth.

Two centuries later, when Nero sent thousands of Christians to the lions and the stake, he set the pattern for Hitler's treatment of the German Jews.

Other well-known instances of genocide include the brutalities at the time of the Crusades, the mass extermination of Slavic populations by the Teutonic Knights, the excesses of Ghengis Khan and Tamarlane and the siege of Magdeburg in the Thirty Years War.

In our own century, we have witnessed the Russian pogroms of 1903 and 1905, the Turkish massacres of the Armenians in 1915, and the wholesale slaughter of Christian Assyrians in Iraq in 1933.

Prior to the advent of Hitler, the greatest carnage wrought against civilian populations was the murder of over a million Armenians by the Turks. This campaign started in 1915 when, within 24 hours, the police in 50 of the largest towns in Armenia rounded up all men from 15 to 70 years of age and slaughtered them in cold blood. Young women were sold into prostitution and trafficked through the brothels of the Ottoman Empire. The remainder of the population was forced into exile. Describing this ordeal, Arnold Toynbee, the noted historian, wrote:

"Women with little children in their arms, or in the last days of pregnancy, were driven along under the whip like cattle. * * * Some women became so completely worn out and helpless, that they left their infants beside the road. * * * Many children seem to have been thus abandoned. * * * Many died of hunger. * * * The people found themselves in the necessity of eating grass.

"The worst and most unimaginable horrors were reserved for the banks of the Euphrates * * * [where] the brigands and the gendarmes threw into the river all the remaining children under 15 years old. Those who could swim were shot down as they struggled in the water. * * * The fields and hillsides were dotted with swollen and blackened corpses, which filled and fouled the air with their stench."

Yes, the massacre of the Armenians was a horror from which the mind recoils; and yet these brutalities were surpassed by the Nazis.

Justice Robert H. Jackson, in his opening address before the Nuremburg Tribunal, said: "History does not record a crime ever perpetrated against so many victims or one ever carried out with such calculated brutality."

Depositions of former Gestapo officers at the Nuremburg trials revealed that 4,000,000 Jews were murdered in the Nazi death camps, while 2,000,000 more were killed in other ways. The methods of destruction, relatively subtle at first, started with imprisonment in concentration camps, which often resulted in death by torture, starvation, overwork, and deliberate exposure to disease. Eventually every weapon of extermination was used: Mass machine gunnings and hangings, compulsory abortion, experimental surgery, injection of chemicals and, finally, the bloodless efficiency of the gas chamber.

The Jews were by no means the only victims of Nazi genocide. Large numbers of Catholic and Protestant clergymen were martyred and the religious sect of Jehova's Witnesses, was almost completely annihilated. What happened to Poland is another case in point.

The Nazi plan for Poland was to Germanize one-half of the nation and incorporate it into the Reich, keeping the other half as a depressed state, devoid of its own leadership or culture, a reservoir for slave labor. To achieve this purpose, Polish leadership groups—Government officials, priests, judges, educators, and others—were either executed or eliminated by imprisonment or deportation.

The Germanic population, amounting to about 13 percent of the total, was reinforced by resettlement of Germans from the Baltic States and elsewhere. Hundreds of thousands of Poles were shipped to Germany as slave laborers, while the rest of the population was kept on a near-starvation diet. This not only reduced the birth rate but also reduced the survival chances of Polish infants. Marriage between Poles was forbidden without permission of the Government. Polish schools, libraries, and other cultural institutions were closed. Polish publications were banned. Polish objects of art were pillaged.

These diabolical techniques were used in every country occupied by the Nazis. In fact, the victims of genocide actually exceeded in number the total casualties caused by the Germans on the field of battle.

Genocide results in cultural and economic loss to the world and the debasement of human values

Beyond the appalling loss of life, the crime of genocide brings with it widespread destruction of economic and cultural values. As mankind is degraded and destroyed on a mass scale, human skills and talents wither and die; scientists, technicians, educators, artists, and administrators of irreplaceable ability are butchered; their manuscripts and artistic works disappear; libraries, archives and art treasures are wantonly destroyed. The world's wealth consists of the contributions made by its component cultures, and all suffer when the fruitfulness of any group is diminished.

In addition, there is the economic loss. Genocide is always accompanied by looting and destruction on an enormous scale. Properties worth billions of dollars were lost in consequence of the Nazi extermination policies; and although it is difficult to estimate these losses in exact figures, there is no doubt that they contributed substantially to the general postwar impoverishment of Europe.

Economically, the impact of genocide in any country is felt elsewhere. The existence of slave-labor camps depresses labor standards in other countries. Trade relations with the victims are, of course, severed. Immigration policies must be adjusted to provide asylum for those who escape death by flight to other lands. Moreover, the cost of rehabilitation of survivors is a staggering burden, as any American taxpayer will testify.

Above and beyond any tangible considerations is the spiritual havoc brought about by genocide. Here the victims are not only those who suffer abuse, but also those who inflict it.

Group extermination is invariably preceded by a series of lesser outrages, starting perhaps with social ostracism and then running the gamut of economic sanctions, political disenfranchisement, and terrorism. Those who manage to flee must live like hunted criminals until they find refuge in another land. Those who remain, and somehow escape annihilation, must live in unspeakable degradation, herded like beasts in concentration camps and driven into slave labor. Family ties are fractured. Husbands are separated from wives; children from parents. Forced prostitution and compulsory sterilization not only destroy the "biological substance" of a group, but also its moral fiber.

Such excesses cannot be committed without involving great numbers of people as partners in crime. To prepare the masses for this complicity, rulers bent on genocide invariably launch intensive propaganda campaigns, appealing to man's most shameful instincts. These campaigns are diabolically calculated to provoke hysteria, mob violence and a reversion to barbarism.

When millions are thus led to ignore the dictates of conscience, to renounce the teachings of religion, to betray the loyalty of friends and fellow citizens, there occurs a spiritual break-down that may take years, even decades to repair, meanwhile imperiling the stability and peace of the entire world. This is the very situation which confronts us in Germany today, as we struggle with the task of reeducating a debased and cynical people and returning them to a humane way of life.

Genocide is a threat to the peace of the world

The fanaticism engendered by these campaigns of hate cannot be confined to national boundaries, as the Nazi experience has established. The German assault against the alleged enemy within prepared the psychological ground for equally murderous attacks against foreign nations. Special army and police troop units—organizations of professional torturers and murderers—bound to one another by common guilt, were built up during the process. These legalized bands of criminals, trained for genocide at home, were well equipped for the inhuman brand of warfare they waged abroad.

Similarly, the entire population of a nation can grow calloused to mass brutality, and eventually become psychologically ready for war.

In fact, many people see this as a real danger in the Soviet Union today, where mass purges and deportations are reported to be in progress. Entire ethnic groups, such as the Chechens, Ingushs, Kalmyks, and Crimean Tartars have been deported en masse from their native territories to Siberia or central Asia under conditions threatening their physical survival. Representatives of the Baltic nations have accused the Soviet Government of carrying out genocidal measures against the populations of Soviet-occupied Estonia, Latvia, and Lithuania. And recent reports of mass deportations of Greeks, Turks, Armenians, and Jews stir serious fears that similar measures are being applied against all non-Slavonic minorities in the western territories of the Soviet Union.

Moreover, hate campaigns inevitably stir up international distrust and tensions that tend to precipitate war. In cases where the victimized group is a national minority, an act of genocide may well result in direct retaliation by the parent nation of the victims.

Evidence presented at Nuremburg revealed that the Nazis used genocide as an instrument of national policy not only to stir up a militant spirit among their own people, but to permanently change the demographic interrelationships of Europe in favor of Germany. Thus, although having lost the war, Germany remains far stronger, populationwise, than the other nations of western Europe today.

The present convention, when ratified, will serve as an effective deterrent against genocide

The enforcement of the Genocide Convention, like all international law, depends on its acceptance by sovereign states. Genocide can be abolished only to the extent that the United Nations itself proves effective in persuading or compelling nations to cooperate.

Certainly the provisions of the proposed convention are adequate to prevent genocide if properly enforced. The treaty states that any signatory nation may call upon the appropriate organs of the United Nations to suppress genocide. Courses of action open to the United Nations under its charter, which may be sufficient to arrest genocidal tendencies, include investigation, publicity, persuasion, and economic sanctions.

Genocide, it must be remembered, is not committed on the spur of the moment. As I have already stated, it is plotted over a long period of time. The people of the offending nation must be primed psychologically to accept wanton brutality; mass extermination is generally preceded by a sequence of lesser outrages. The convention authorizes the United Nations to suppress incitement and conspiracy to commit genocide. Therefore, during this build-up period, the active opposition of the entire world might very well stamp out the sparks of mass murder before they burst into flame.

Heretofore, genocide has been regarded as purely a domestic concern of the country where it occurs. Even in our century, on every occasion when genocide has been committed, other nations have done nothing more than send notes of protest. The offender's misdeeds, however shocking to world opinion, were considered beyond the reach of international action. There was no law under which a depraved ruler could be called to account. Knowledge of this fact encouraged genocidists to engage in their foul practices without fear of reprisal.

Hitler was well aware of this immunity. In 1939, just before the invasion of Poland, he said:

"What the weak western European civilization thinks about me does not matter * * * I have sent to the east only my Death's Head units, with the order to kill without pity or mercy all men, women, and children of the Polish race and language. Only in such a way will we win the vital space we need. Who still talks nowadays of the extermination of the Armenians?"

Now, the massacre of the Armenians, you will recall, was perpetrated by the Turks. And the Turkish Government, along with her German ally, was defeated in World War I. Had there then been a law for the punishment of genocide, the Turkish rulers who had ordered the extermination of the Armenians, could have been brought to justice; Hitler would have known that he could not commit genocide with impunity. In the future, if the convention goes into effect, would-be genocidists will know that if their government is deposed or their nation defeated in battle, they will in all likelihood be apprehended and held answerable for their crimes.

It must be remembered, too, that the Nazis were never punished for acts of genocide committed prior to 1939. The Nuremburg Tribunal, which tried war criminals for crimes against humanity, refused to consider outrages occurring before the war, on the grounds that no international law was violated. Had the Genocide Convention been in existence two decades ago, those who perpetrated atrocities between 1933 and 1939 could have been brought to trial.

The Genocide Convention is fully consistent with international legal precedent and constitutional law

I should now like to address myself to certain legal considerations.

Ratification of the convention against genocide has not only been strongly supported by scores of organizations, by leaders of the Protestant, Catholic, and Jewish faiths, by newspaper editors and others who reflect public opinion, but it is also most vigorously advocated by the most competent legal authorities. Such noted scholars of international law as Professor McDougal of Yale Law School, John Foster Dulles, Adolph A. Berle, and Judge Robert P. Patterson have argued in favor of ratification. The Bar Association of the City of New York, which includes some of the most distinguished lawyers of our Nation, has supported the convention.

In fact, the only opposition to ratification worthy of note has come from certain leaders of the American Bar Association, who make a number of invalid contentions as to how the convention would operate, as well as to its constitutionality.

The resolution adopted by the house of delegates of the American Bar Association at its recent meeting in St. Louis recites that "the proposed convention raises important fundamental questions but does not resolve them in a manner consistent with our form of Government."

Leaders of the American Bar Association speak of the Genocide Convention as "revolutionary," and claim that a horrendous "new concept" of treaty law is brought into being which never existed before and that this "new concept" presents a "far-reaching and insidious challenge." The association has proclaimed that the Genocide Convention goes beyond the treaty power, that it would rob States and municipalities of authority and become a "supreme law of the land" in opposition to American interests. Further, the domestic affairs of the United States would be brought before an international tribunal and the sovereignty of the United States would be yielded to a world court. And finally, it is charged that our freedoms of speech and press are threatened, and that our citizens would not be safe from extradition for political crimes.

I would now like to deal with each of these contentions. In my opinion and in the view of the American Jewish Committee, the Genocide Convention, as transmitted by the President to the Senate, is in no way incompatible with our Constitution and raises issues of policy only.

To begin with, adherence to and implementation of this convention are well within the scope of the treaty-making and other Federal powers. It is held by every competent observer today that the treaty-making power is sufficiently broad to cover effective action on all matters of genuine international concern, under whatever conditions a changing world may impose. The framers of our Constitution thought "it most safe," in Madison's words, to leave the treaty power without enumeration "to be exercised as contingencies may arise." The classic modern statement is that of Chief Justice Hughes, who said:

"I think it perfectly idle to consider that the Supreme Court would ever hold that any treaty made in a constitutional manner in relation to external concerns of the Nation is beyond the power of the sovereignty of the United States or invalid under the Constitution of the United States where no express prohibition of the Constitution has been violated."

The emphasis laid by the bar association on the words, "our form of Government," and some of the argument supporting its resolution, carry the suggestion that the powers of our several States, as guaranteed by the tenth amendment, in some way limit the treaty power. On no point has the Supreme Court been more emphatic or more consistent than that "the powers of the States * * * set no limit to the treaty-making power."

The bar association leaders have also made the suggestion that ratification of the Genocide Convention by the Senate would be incompatible with the powers of the whole Congress "to define and punish * * * offenses against the law of nations." This objection is groundless.

Since the beginning of our history, the powers of the Senate and of the whole Congress have been exercised concurrently. No good reason is given for treating this particular grant of power to the Congress as exclusive with reference to this particular agreement.

The argument that this country would be peculiarly vulnerable in adhering to the Genocide Convention, since its provisions might become the supreme law of the land here, before being implemented in other countries, is both inconsequential and ill-founded. Of course, it is difficult to see what this country could lose in defining and outlawing such an infamous crime as genocide even if other countries failed to honor their commitments. But, assuming that fear of some disadvantage is rational, several remedies are readily at hand.

In the first place, in accordance with Article 13, the convention does not come into effect until ratified by twenty nations. In addition, the convention admits of the interpretation that it is not intended to be self-executing. The Senate may, in giving its approval, adopt this interpretation, or expressly condition its approval upon implementation in other countries. Similarly, the President may make equally effective reservations when he gives final utterance to the agreement as the international obligation of this Government. Finally, in case of bad faith by other governments, the Congress may, of course, promptly abrogate any treaty. Well-hallowed doctrines of international law, such as rebus sic stantibus and abrogation for failure of performance, are available to discharge any international obligation assumed.

There is nothing "foreign" about the Genocide Convention. Actually, it is couched in terms of familiar Anglo-American legal theory and embraces traditional American common-law concepts. For instance, the convention preserves

the principle of territorial jurisdiction over criminal acts, although an earlier Secretariat draft would have permitted States to punish genocide "irrespective * * * of the place where the offense has been committed." Conspiracy, attempt and complicity, all punishable under Article III, are common-law crimes familiar to American lawyers. Furthermore, the definition of genocide itself meets the traditional American approach to the concept of a criminal act: to constitute the crime of genocide, as defined in article II, an act must be coupled with specific intent "to destroy, in whole or in part, a national, ethnical, racial, or religious group as such." It was the United States, as a matter of fact, which was responsible for the addition of an intent element to the crime, and the gist of the offense of genocide lies in the requirement of an intent which cannot be presumed, but must be proved.

The bar association leaders have exaggerated out of all proportion the effect that our ratification of the Genocide Convention would have on American domestic affairs. They contend, for example, that any instances of racial segregation or lynching which may occur in the United States might be considered acts of genocide; and that, because of this purely domestic matter, one of our States and all its public officials might be charged with genocide in an international court. It is even contended that race riot occuring in some high-tension neighborhood in one of our cities might result in a claim before an international tribunal of American "complicity in genocide."

This point of view embodies two basic misapprehensions as to the provisions of the Genocide Convention.

First, given the definition of intent, even acts of such violence as murder or assault would not constitute the crime of genocide. Parties to a lynching, for example, might be tried for murder, or for conspiracy to commit murder, but could not be tried for genocide without the requisite intent. Nor could racial segregation be considered genocide unless joined with an intent to destroy the segregated group. Only segregation for purposes such as those which motivated the Nazi use of concentration camps would be an act of genocide.

In the second place, ratification of the present Genocide Convention would not establish the international penal tribunal envisioned by the bar association spokesman, since no such tribunal is presently included in the convention to be ratified. Article VI does make reference to the possibility of such a tribunal in the future, but only to avoid the necessity of amending the convention if and when this court is established. Creation of such a court, and United States acceptance of its jurisdiction, could only be accomplished by a completely separate treaty. Ratification of the present convention would mean only the acceptance of the jurisdiction of the International Court of Justice over disputes arising from the interpretation, application, or fulfillment of the convention.

The contention that the convention is a radical departure from American custom avoids the fact that, in the past, the United States has adhered to treaties for the suppression of such international crimes as the circulation of obscene publications, the opium trade, the slave trade, and white-slave traffic.

There are other charges which are equally vulnerable. An example is the contention that article III (c) of the convention, which concerns "direct and public incitement to commit genocide," violates freedom of speech and press in the United States. This is hardly the case. In the first place, a possible conflict between this provision and the guaranties of the first amendment is avoided by the circumscription that each contracting state agrees to enact effectuating legislation only in accordance with its constitution. Thus, only such incitements as obviously present a "clear and present danger" are proscribed. There does not exist in the United States, or anywhere in the world, absolute freedom of speech and press. It has long been recognized that direct incitement to riot, or to murder, or to any other crime is itself criminal. No violation of free speech is involved in prohibiting such incitement. Since this entire matter is subject to constitutional test, the United States is protected.

It has been suggested that extradition of American political offenders would be required. But the convention permits extradition only in accordance with laws and treaties presently in existence. Procedural safeguards would be employed to see that fabricated charges of genocide would not suffice to cause extradition. As for the extradition of nations actually guilty of the crime of genocide, the United States has long taken the lead in advocating mutual rendition of nationals, and does not even object to the extradition of American citizens from one foreign state to another.

Finally, the crime of genocide under the convention seems sufficiently defined. The phrase "part of a group," while not specifically defined, seems clear and

unrealistic, considering the fact that an entire group is rarely affected. Article II sets forth specific definitions of the term "destroy," so that its meaning is indisputable. The term "mental harm," which is used by the bar association leaders with reference to racial segregation, actually applies only to such drastic matters as the use of stupefying drugs, as is made clear by the records of the Sixth Committee and the letter of transmittal of the Acting Secretary of State to the President.

The real issue posed for the United States, as for every other nation, is the policy issue—whether we should enter into the Genocide Convention in return for similar commitments by other states. This convention is but one of many interrelated measures in a world-wide program to secure peace and respect for the dignity of the individual human being. The United States can further this program of peace by ratifying the Genocide Convention without delay.

It is important that the United States ratify the Genocide Convention without delay

Bitter experience has shown that the moral indignation of the righteous is but a feeble preventative against crime.

In the absence of a law against genocide, the civilized world has its hands tied. This predicament was well illustrated in 1921 when Talat Pasha, former Minister of the Interior of Turkey, was murdered in Berlin by a young Armenian named Taliran. The motive was revenge, although it might be called personal justice. Taliran's family had been slain during the Armenian massacres of 1915–16. To the rest of the world his action seemed justifiable, yet he was certainly guilty of murder. However, rather than condemn him to death, the court acquitted him on the grounds of insanity. Consider the travesty. In effect, civilization had to call a man mad rather than punish him for providing the means of justice which its own laws failed to do.

Yes; there was need for a convention against genocide back in 1915, just as there was such a need in the days of ancient Carthage and in the reign of Nero.

Unfortunately, international society for thousands of years has observed the law of the jungle. Strong nations have trampled on the weak. Tyrants have abused their subjects in any way they saw fit.

Now, through the medium of the United Nations, we hope that we may elevate the standards of international justice to the level of behavior we observe within our own borders. The convention against genocide will be a significant landmark denoting mankind's passage from the jungle.

The United States, by continual devotion to justice and humanity, has earned a reputation as the leader of world morality. This reputation was heightened by the labors of the members of our delegation to the United Nations, who played an influential role in formulating the Genocide Convention and in securing its adoption. It would have been most fitting for our country to have been the first to ratify this great measure. Unfortunately, that opportunity has passed. The parliaments of six nations have already given official endorsement to the convention. Our international prestige will be endangered if we delay longer.

The eyes of the world are upon us at this moment, watching to see if we will continue to build the temple of peace which is slowly being fashioned out of respect for law between nations. Should we, by any mischance, fail to act, we would shake this temple of peace to its very foundations.

We must continue to assume our responsibility for world leadership. We must assert the profound American conviction that this world cannot survive half free and half subjected to oppression and slaughter.

UNITED STATES RELATIONS WITH THE UNITED NATIONS

Senator THOMAS of Utah. Before the gentleman leaves, there is a seventh point I wish to discuss for a minute, in addition to his six.

If the Genocide Convention is ratified by the United States, I would like to have another paragraph on our relations with the United Nations under the provisions of the treaty in case a nation should be called to account by the United Nations as to just what would become of our obligations under the treaty.

Mr. BLAUSTEIN. It seems to me that in the first place, the other nation would not be bound unless it was a signatory. Then it seems

to me that at this stage, what we would do would be to investigate, we would have publicity, we would use persuasion, maybe economic sanctions. We would try to do those things up to the time that the United Nations itself effected a more stringent implementation of this Genocide Convention.

DIFFICULTY OF ENFORCING THE CONVENTION

Senator THOMAS of Utah. You do recognize the fact that this would be one of the hardest types of agreements between nations to enforce; do you not?

Mr. BLAUSTEIN. The fact is that unanimously in the United Nations they agreed to this.

Senator THOMAS of Utah. I understand that.

Mr. BLAUSTEIN. It is also a fact that anything, I suppose, that is tried to be accomplished internationally is difficult. There comes a time, does there not, Senator, when steps have to be taken, particularly when the consequences are so great if they are not taken, despite the involvements. Of course, there will be difficulties. But after all, at the outset, the courts of the country themselves would be the ones to act. It would not be our courts that would act on a situation that came up in another country, or vice versa. Once a government agreed to this and the country passed it, then its own courts would be the ones called upon to enforce it. If it did not enforce it, it would certainly be the duty of other nations to call attention to the fact they were remiss.

Eventually, there might be an international court at some time. That, of course, you realize it not projected at the present time.

Senator MCMAHON. Thank you very much.

Mr. BLAUSTEIN. Thank you, Senator.

Senator MCMAHON. The next witness seems to be Dr. Prinz and Mr. Shad Polier, representing the American Jewish Congress, in lieu of Rabbi Irving Miller.

STATEMENTS OF DR. JOACHIM PRINZ, NEWARK, N. J., AND SHAD POLIER, OF THE AMERICAN JEWISH CONGRESS

Dr. PRINZ. Mr. Chairman and members of the committee, I appear here as the vice president of the American Jewish Congress. I should like permission from the chairman to file a more comprehensible statement later for the record, while I will refrain from reading the document here.

Although I am here in my capacity as the vice president of the American Jewish Congress, I cannot forget that I served for 4 years as the Rabbi for the city of Berlin under the Nazi regime, and during those 4 years I have buried victims of genocide.

I think it is important that I should make this point as simply as it can be made and without undue emotion, because I believe that as we move away from the events that have only occurred a few years ago, people are apt to forget what we now call by a very fancy name of genocide is a very simple and tragic thing, namely, the killing of people, of men, women, and children.

It is for this reason that I should like to emphasize the fact that I, as a rabbi, have buried hundreds of such victims, have lost a great

many members of my own family in the commission of genocide on the part of the Nazis.

I should like to emphasize the fact that ought not to be forgotten in legal and political discussions of the problem.

As representative of the Jewish people, I should have it easy to state that the history of my people can be written in terms of genocide; that from the pogroms of the first century in Alexandria, until our time, our people have truly lived through genocide.

NAZI ATROCITIES

But I should like to add, Mr. Chairman, that it would be a grave error to believe for a moment that only my people were involved in this question. I have revisited Germany this summer, and I have been in the crematorium of Dachau and read the records where 173,000 people were gassed. The vast majority of these people were not Jews. Members of the monastic orders of the Roman Catholic Church were killed, and 700 ministers of the Protestant faith.

Even if I talk as a Jew and rabbi and as a representative of the American Jewish Congress, I should make it clear this is a very broad subject, and that all of humanity is involved and not only one group.

On the basis of grave moral and religious consequences, something to do with the conscience of the world and with the conscience of this great country, we are gratified to see that the United States has already recorded and defined its position on the Genocide Convention.

UNITED STATES LEADS

Mr. Ernest A. Gross, member of the United States delegation to the United Nations, in speaking before the Sixth Committee of the General Assembly declared:

> I am honored to be able to report that my Government was one of those who took an early, active and leading part in the effort of the United Nations to outlaw this unspeakable offense.

Upon another occasion, 2 months later, he reported to the General Assembly:

> It seems to the United States delegation that in a world beset by many problems and great difficulties, we should proceed with this convention before the memory of recent horrifying genocidal acts has faded from the minds and conscience of man. Positive action must be taken now.

In the light of our active endorsement of the Genocide Convention in the United Nations, and in light of the well-articulated position of our United Nations delegation, rejection of this convention now by the Senate will not be regarded lightly by the nations of the world. They will not understand it, as indeed many Americans will not understand it, as demonstrative merely of a reluctance to intrude upon legal niceties. For the truth is we live in a world not of memoranda and statements, of interpretations and legalities, but in a world where common people have very ordinary tests of human conduct. To these people it will appear as though the United States would condone those atrocities which in the past we have so often and so eloquently attacked. It will serve notice to other nations that we regard this convention an insupportable document. Nor can we indulge ourselves in the com-

forting thought that the world will not note what we do here, for it will note it and note it well. Whether we would have it so or not, this Nation has achieved a position of world leadership, which it cannot now abdicate. Seven nations have as of this time ratified the Genocide Convention. Thirteen more are needed to give it effect. The action taken by this Government will be crucial and decisive, for it is well established that smaller nations are waiting our cue as the acknowledged leader of liberal democratic powers. These 13 additional signatures will be quickly and readily obtained if the United States ratifies the convention now. They may never be obtained if this country fails to ratify.

THE ALTERNATIVES

The Senate must either relegate to the scrap heap a serious attempt to mobilize the world community against the philosophy of annihilation, or by ratifying the convention, give notice not only of its solemn condemnation of acts of genocide, but of its firm determination not to tolerate them. In this choice resides the difference between existence and extermination of thousands of people who have come to look to the United States more than to any other nation for help and assistance in a troubled world.

May I conclude, Mr. Chairman, by saying that I know that the ratification of the Convention of Genocide will not serve as a belated monument to the people whom we buried, and lost, but as an effective and legal and moral instrument to prevent that which has occurred in this world.

APPLICATION IN THE UNITED STATES

Senator THOMAS. Mr. Chairman, before the rabbi leaves, I have asked questions of quite a number of witnesses for the purpose of getting information, because we are asked questions in turn. None of us expresses an opinion.

I happened to be one of the official witnesses whose name will go down through history to the atrocities that you have been mentioning. I have seen them and I have signed my name to the document that I have seen them. Naturally, of course, I am in favor of a Genocide Convention. I have seen antiracial and antireligious and antigroup killings in other parts of the world besides our part, in parts of the world where no notion exists of the value of human dignity or that a man has something like an inherent right to live. I have never seen the brutality that was carried on during the war against the groups in Germany, whether they were Christian or Jews, just anyone who happened to get in a concentration camp. This convention will condemn not only those things that have gone on in the history of your people, as you have mentioned but they will condemn killings in other parts of the world that your people are in no sense related to, and they have suffered quite a much as any other people have suffered throughout the years, because persecutions for racial reasons, persecutions for religious reasons are not new and not as new as most people have stated here in their testimony. They are very much older.

The most interesting thing that has taken place today has been the testimony put forth by President Van Buren in a condemnation of

what we would now call genocide outside of our country. When Van Buren became President of the United States, people who were being hurt came to President Van Buren and asked for aid to protect them right in our own country. His answer was, "Your cause is just but I can do nothing for you."

So it is perfectly natural for me to ask about Federal and State relations in a case of this kind in case somebody should try to exterminate a group in one of our States or somewhere else.

NEED FOR MAKING POSITION CLEAR FOR RECORD

Now, I think, and this is not criticism of anybody, that the greatness of this convention is not the fact that it will try to correct some injustices that have been done to certain people, but it will lay a standard for the whole world, and bring about some recognition in parts of the world where the dignity and worth of a human being as a man and individual has not been recognized. But the saddest part to me personally is that we may find some constitutional and legal barrier in the way of trying to do some great work; and then the saddest of all things is that it was in what was called a Christian country, and western country, where individual rights had moved on to some place that we had the worst example of the slaves that we had anywhere excepting where we had complete extermination of people.

I thought, Mr. Chairman, a man who sits here and asks questions, questions which might be interpreted as being antagonistic questions, or something, ought to at least defend himself to say he is on the record, and it is a record made by the United States Government and will last forever; and it was that record more than anything else that made it practical and almost easy for the United States Government to defend the Genocide Convention.

Dr. PRINZ. I should like to direct Mr. Polier to the legal aspects, Mr. Chairman.

OPPOSITION IS PETTIFOGGING

Mr. POLIER. Mr. Chairman and members of the committee, I should like to say that I hope that yourself and Senator Pepper and Senator Thomas will extend my time by asking a great many questions, because I happen to agree with the Senator that the only obstruction that the Genocide Convention faces in the matter of its adoption is, as one lawyer may say of another lawyer, that is the most elaborate bit of pettifogging that we have been subjected to since Dickens recorded the history of Allerdyce against Allerdyce.

I find it rather difficult, gentlemen, to find the inarticulate major premise in this document proposed by the special committee on peace and law through the United Nations of the American Bar Association. I should say it would be difficult, and I realize the eminence of the gentlemen who subscribe to the report, as being a collection of the most farfetched fantasies under the cover of any single document as is to be found in that document in which these eminent gentlemen say that the adoption of this convention would subvert the Constitution of the United States. I think the answer is that it is sheer legal nonsense, and sometimes you find someone wondering who the client is that has induced them to prepare this. It is a refreshing contrast to read another document which the bar association at another meeting

did not see fit to approve. That is the report of its section on international law. However, I would like to mention six of the points, and dwell on two of them. I would like to briefly advert to the constitutional arguments advanced by the American Bar Association against this convention.

CONSTITUTION FREQUENTLY A BAR TO MAJOR SOCIAL REFORMS

I may say, though, that I know that the members of this committee, at least those present now, are quite familiar with the fact that it is not unusual for any major social reform, without even getting into international affairs, to find that somehow or other there was a Constitution in the way of accomplishing it. History has indicated that the Supreme Court of today still believes as John Marshall did that it is the Constitution that they are interpreting, but varying groups among them, two of the elder Senators can remember, once voiced their views very strongly through the Liberty League. I remember Senator Thomas' battle with that group. The Constitution of the United States is a basic human instrumentality, and even apart from the treaties, I believe our Supreme Court has found it gives us the power to act as a sovereign nation, a decent nation, a democratic nation.

STATES' RIGHTS

I would like to briefly indicate some of the answers to some of the objections. Of course, one of the best ones to trot out, being a southerner myself by origin, is to say that this is a convention to destroy States' rights and destroy the relationship between the National Government and the States.

All I can say to that is that the Constitution of the United States gave the treaty-making power to the President with the advice and consent of two-thirds of the Senators voting. It conceived there being certain matters of the relationship of this Nation to other nations that required the handling by the Federal Government.

Now, it is perfect nonsense to say that the crime of genocide is an international problem and is one that can be or should be handled by 48 legislatures. Genocide is not merely a crime against the individual in the nature of homicide. It has, because of its effect upon the world as a whole, become something that the people of the world unanimously said is a crime against humanity. And while the act may be homicide, it is genocide when it is done with the purpose of destroying a group. In other words, we recognize in this world that in a democratic world there is not only the right of the individual to survice as the individual, but his right to survive as a member of a group.

Now, that is a right that is very clear and it is recognized in our country. For example, some 15 or 20 years ago there was a question whether or not a State, I think it was Nebraska, could prohibit the continuance of parochial schools, and the Supreme Court of the United States said the right is a constitutional right to continue your existence as a religious group. In other words, what we are saying here is that what we recognize is internationally the group to exist as well as the individual, because we realize that unless we can exist as a part of a group, whether it be a church or trade-union or otherwise, the individual is lost in our society.

The Constitution, and the laws and treaties promulgated under it, are the supreme law of the land. Of course, as a matter of fact, if you want to implement this convention later, you can decide, as the Congress of the United States, to provide for punishment in the State courts. If you do not want to put the job in the Federal courts, that is a matter the Congress can decide. All that the adoption of the convention does, and that is a great deal, is to enable the Congress of the United States then to pass legislation to implement it. It may very well have that power now under the clause of the Constitution which was cited here before. But even if we have the power under our Constitution without the treaty to punish genocide, and I happen to believe we do, that would not be enough. We are not asking the United States, we groups who are urging the ratification of this convention, to raitfy so we will be one of the 20 necessary States. Even if there were to be 20 other States that were ready, willing, and would tomorrow ratify this without our adherence to the treaty, and even if we were willing to simply pass domestic laws under our constitutional powers which exist in the absence of this convention, we would be here urging that you adopt this convention. Otherwise, as Rabbi Prinz has indicated, we will have forfeited our position in the world as a leader, that is, as a leader in world and moral opinion.

ANSWER TO THE BAR ASSOCIATION'S TECHNICAL OBJECTIONS

Now, there are two technical objections that have been raised by the bar association which require an answer. One of them is that the provision in the genocide treaty, the prohibition against the direct incitement of genocide, is said to be by those gentlemen an interference with freedom of speech and freedom of press. Well, in my few years I have signed a good many briefs in the Supreme Court on the subject of freedom of speech and freedom of the press, and I do not recall finding myself in the same company as any of the gentlemen on that committee. Their sudden tender concern with freedom of thought and expression I could understand if it came from such a person as Judge Paterson, who talked to you this morning, who is concerned with that every day and not only when international treaties are up before the Senate for consideration.

So much for that argument, but sometimes it has a certain validity because you do know the people by the company they keep or do not keep. But the fact of the matter is that the legislative history, and treaties of that history, of the Genocide Convention, makes it perfectly clear that the prohibition of direct public incitement is intended to prohibit the same kind of incitement as when a man gets up in front of a group of people and urges them to murder somebody. The Russians want that provision of the convention much broader. They wanted to prohibit any kind of propaganda that might result in a state of feeling which might generate genocide. That was squarely and completely repudiated by vote. So that the incitement today that is prohibited is the incitement with relation to genocide that we have today in our common law, incitement to murder, riot, sedition. The clear and present danger was written in the legislative history, and if the gentlemen of the bar association had really wanted to read it, they would have seen it.

Now, there is only one additional point that I should like to bring out at this time. The second major objection to the convention is that it subjects American nations to the jurisdiction of an international penal court which will furnish less protection against the invasion of personal rights than that obtaining in domestic courts.

The answer to that is that the convention itself makes clear that there shall be no international penal court unless and until some day in another convention or another treaty one is proposed and we ratify and adhere to that under such reservations, if any, as we may choose.

RESERVATIONS OBJECTIONABLE

I would like to say a word on the general subject of reservation. I think one of the most terrible things to be accomplished next to not ratifying the treaty would be to attach to it a series of reservations which would destroy the character and the integrity of the convention. I should say, gentlemen, in a very large measure the adherence of the United States to this convention is of symbolic value. We do not need a genocide convention for the United States. We have plenty of troubles and plenty of problems, but genocide is not one, has not been one, and unless and until someday a Fascist force were to take over the Government of this country we never will have one, and when we have that type of government, our convention is ended.

So, the importance of our adherene is symbolic, it is to indicate to the world that we believe that this crime against international law should be established and prevail during peace and during wartime. What concerns me, gentlemen, is the adoption of reservations which will make the promise to the ear and break the heart.

THE CONVENTION IS NOT "UNTOUCHABLE"

Senator HICKENLOOPER. Mr. Chairman, may I ask a question?

Senator MCMAHON. Yes.

Senator HICKENLOOPER. Do you follow the philosophy that because some group, international or otherwise, has presented a fait accompli here, a document present to us, that it is untouchable so far as we are concerned?

Mr. POLIER. Not at all, Senator.

Senator HICKENLOOPER. That we are thereby precluded from examining it or examining things for the genuine long-range good of the people of the United States and their system of laws?

Mr. POLIER. Not at all. As a matter of fact, I think one of the soundest parts of our Constitution is that when the Constitution says that the President may initial the treaty with the advice and consent of two-thirds of the Senate, that has always been understood as part of our constitutional history that the Senate can condition its consent upon reservations.

As a matter of fact, as I recall the report of the Acting Secretary of State to the President of the United States, he indicated the desirability of a reservation on one particular point, I think, with reference to article IX so as to remove any ambiguity on the point as to whether this country could be held liable for damage to citizens of this country.

If reservations are needed to clarify, I think they should be made. I think it would be most unfortunate to deny the very heart and prin-

ciple of the bill itself. That does not mean that we do not have the constitutional right to make reservations we think necessary, or that the document is supposed to be infallible. The document may be fallible and the Senate of the United States may be fallible.

So I do not take the position that the Senate must accept the document as it is presented, but I say, and repeat since you were not here before, that in deciding whether or not there should be ratification, I do not think there should be much attention paid to the far-fetched and pettifogging interpretation of the American Bar Association.

I think indeed, and I said before you came in, that if there were any doubts or any technical points since I am chairman of the legal committee of the American Jewish Congress I will undertake to answer any such questions.

For example, Senator Thomas asked a question, I think, of Mr. Bloustein on how would the crime of genocide be dealt with if it were felt that some other nation were not carrying out its obligation and was sanctioning or condoning genocide? I do not want to speak at too great a length and, therefore, I will call your attention, Senator, to an excellent article in the Year Law Journal of June 1949, volume 58, No. 7, the title of which is "Genocide, a Commentary on the Convention."

That begins at page 1142 of the Year Law Journal and beginning at the bottom of page 1147, there is a comment of about a page documented on international enforcement, the gist of which is that apart from debate in the Assembly and investigation and report by the Economic and Social Council, that the only sanction is that of the Security Council, subject, of course, to veto and the like and where I think the pretty common-sense observation is made that quite apart of anything else, if it were simply an act of genocide and no aspect of war was involved, that the Council itself would certainly at the most recommend diplomatic or economic sanctions. I think that is a pretty realistic statement of it.

I think that it is not discouraging because I believe if there were greater possibilities for endorsement over the wishes of the Nation that we would find the whole thing unworkable, not only with respect to genocide but with respect to many other matters.

I understand this morning the comment was made, or the suggestion was made, that perhaps we should by an appropriately worded resolution, eliminate any possibility of review by International Court of the question of whether or not we lived up to our treaty obligations and with your indulgence I would like to speak a word to that.

NATURE OF THE JUDGMENT OF THE INTERNATIONAL COURT

The International Court would only express an opinion. We would have two things that we could do with the opinion, we could be influenced by it and remedy our laws or we could disregard it.

In the latter case you have only the sanction of world opinion against you. I think that it would be a great mistake, however, for us to reserve to ourselves the right to be our own judge in this matter because here we are fulfilling a high international and moral commitment. I think we, of all people, can of all peoples of the earth be ready and willing to have a judgment expressed on whether we have fulfilled our obligations. I think it would be very, very much more

of value to ourselves and to the people of the world if we obtain the opportunity of calling before the international bar of justice, public opinion which is what it amounts to.

I thank you very much, gentlemen. I would appreciate it very much if there are any questions, if you would put them to me.

Senator THOMAS. I have no questions.

Senator MCMAHON. Senator Hickenlooper?

Senator HICKENLOOPER. No, thank you.

Senator MCMAHON. Senator Pepper?

Senator PEPPER. At least this document of that committee makes an interesting contribution, if not a favorable one, to this subject.

Mr. POLIER. May I suggest, gentlemen, I do not want to burden your record and if you do not think it would be helpful that is satisfactory, but I have here an abstract of the legislative history of the Genocide Convention from the moment of its first introduction as a resolution. This is an objective study; this is not an argument. This is not a matter discussing whether this should be adopted or not. It is purely an analysis. Sometimes a lawyer like myself would rather have something like this to use in arriving at my own conclusions.

Senator MCMAHON. How long is it?

Mr. POLIER. This document is mimeographed and it consists of 56 pages. I do not know whether you want it transcribed or not, but it is the only document that gives the legislative history and is entitled "The Genocide Convention, Its Origins and Interpretations," prepared by Dr. Robinson, whom the American Bar Association, as a matter of fact, quotes as an authority. It is not my statement. It is the only place where I know this history is available.

Senator MCMAHON. I think perhaps as long as it is that kind of an analysis, it would be helpful to have it in the record for ready reference. So we will put it in.

(The information will be found on p. 487.)

Senator MCMAHON. Next we have Mrs. Irving Engel, president of the National Council of Jewish Women, of New York City.

STATEMENT OF MRS. IRVING ENGEL, PRESIDENT, NATIONAL COUNCIL OF JEWISH WOMEN, NEW YORK, N. Y.

Senator MCMAHON. Do you wish to submit a statement?

Mrs. ENGEL. I am going to be very brief, Mr. Chairman, and give you practically four pages.

Senator MCMAHON. Go right ahead.

Mrs. ENGEL. Mr. Chairman and members of the committee, I am Mrs. Irving Engel, president of the National Council of Jewish Women; I am here to testify in support of the ratification of the Genocide Convention as the representative of the 86,000 members of the National Council of Jewish Women.

RESOLUTION CALLING FOR RATIFICATION

At our nineteenth triennial convention held in Baltimore last October, the delegates unanimously supported the resolution for the ratification of the Genocide Convention.

Whereas the destruction of groups of people has been declared an international crime under the Genocide Convention: Be it further

Resolved, That the National Council of Jewish Women urge the United States Government to ratify and support the Genocide Convention.

Our members voted to support the Genocide Convention, not from a vague sympathy, but because through the council program they have been made directly aware that genocide means the degradation of the human spirit and the waste of human resources.

THE CASE OF DANUTA

You have listened today to general statements, to tremendous figures. May I give you one case history from the files of our home in Paris, a home run for the victims of genocide?

Danuta was living in the ghetto in Krakow, Poland, when the war broke out. Her parents tried to hide in the chimney of a bakery but she was found and taken with her mother to a concentration camp. Her father was taken to another camp and she never saw him again. After 6 months in the camp she and her mother escaped but shortly after she was separated from her mother. Danuta was able to find work as a servant with a peasant woman who was insane. Her salary consisted of beatings and constant blackmail on the threat of denouncing her because she was Jewish. The nights were filled with neighborhood attacks by Ukranian Partisans and the days were spent in constant fear of searching parties by the Gestapo. The house in which she lived was burned down shortly before the approach of the Russians, when she was liberated.

Danuta is now a biology student. She is an extraordinary girl who worked first as an auxiliary social worker at one of the refugee committees but changed to biology when she found that this work did not satisfy her. In order to gain admission to the university she had to go to school like a young schoolgirl. Since she is very determined and single-minded with regard to her studies, she will probably reach her goal.

This, gentlemen, is a bare, factual outline taken from our files on the pathetic products of genocide who fill the council homes for unattached Jewish girls in Paris and Athens. It is a case history which is duplicated many times over with variations in horror.

Genocide is an endless scourge. It wreaks its havoc long after the actual deed is done and then long after the perpetrators of the evil have ceased to exist. How many countless survivors of genocide are there, young and old, whose ability to contribute to the preservation of civilization itself has been permanently warped by the physical and emotional tortures suffered as a result of genocide? The history that I have cited is extraordinary in its revelation of the strength of the human will to surmount the most awful circumstances but it is also a terrifying picture of lost energies and talents that can never again be regained.

Genocide is the insidious foe of civilization. When a group is destroyed much more is lost than the men, women, and children who make up that group. With their destruction the world loses the creative energies, the cultural and the religious contributions which they had to offer. Again, we of the National Council of Jewish Women are intimately aware through our work of these ravages of genocide.

INTERNATIONAL COUNCIL OF JEWISH WOMEN MEETING IN PARIS

At the meeting last summer of the International Council of Jewish Women in Paris, the reports of most of the delegations were unlifting and discouraging by turns, but the report of the delegate from Holland was unrelieved by any note of optimism. It was a stark description of the deliberate destruction of a group and the hopelessness which besets

the few survivors. It was a grim picture of the horrible waste of human resources which is the result of genocide.

The delegate from Holland described the active council program before May 1940, when there were 1,200 members in the Dutch Council, out of a total 150,000 Jews in Holland. She spoke of the many lectures which were sponsored by the women, the editing of a monthly paper which was widely read outside the council organization, the exhibition held in the municipal museum of the Hague. In addition to its cultural program, the Dutch Council of Jewish Women had an active social welfare program which stressed youth work, poor relief, and clubs for workingwomen.

This was the kind of energetic and socially conscious program with which the delegates from the councils in other countries were familiar on their own. But it was the conclusion of the Dutch delegate's report which laid bare the tragedy of genocide. She said, "It is not worth while to start another organization for the eventual 150 members of the remaining 24,000 Jews in Holland. The decimated Jewish population has no life capacity any more in Holland. I am afraid that most of you have not the faintest idea about what is left of the once small but flowering Jewish community in Holland. Always making its point of honor to take care of their old people, their orphans, and their poor."

Every one of us is paying the price of genocide. No individual and no state can remain immune from its effects. Most of the damage can never be repaired, but we are doing our utmost with money and service to save those who remain. The United States and most of the other nations of the world are contributing to the United Nations International Children's Emergency Fund which is providing food, clothing, and shelter for the children whose homes and families were destroyed by genocide and the war.

We in the National Council of Jewish Women, like so many other organizations throughout the country, are attempting to help restore the victims of genocide to a normal, useful life through homes in which they can regain some of the warmth and community life of which they have been deprived, and through scholarships to this country which provide the education which was terminated so abruptly.

Throughout the United States, in large and small communities, our members are working to make the new immigrants to this country productive and happy citizens who will contribute to the well-being and growth of America. By providing homes and employment for them, we are offering the essentials of new life to people whose old life was destroyed by one of the worst evils committed by men.

All of us are devoted in this work but we cannot fail to realize that here, too, we are paying the price of genocide in the expenditure of energies that could in happier conditions be put to more constructive use. Our best efforts will bring these people back only to where they were before the atrocities of genocide. This is not the way in which civilization advances.

GENOCIDE NOT A NEW CRIME

The crime of genocide is not new. For the sake of brevity I will not take any time to go into the history of genocide. I will not even mention the international conventions, though I must say that I happen

to believe if we did have international conventions which were supposed to be crimes against mankind, I do sincerely think that the genocide convention was a very, very serious crime to stop.

Throughout history there are horrible examples of it familiar to all of us. But little or no action was taken to prevent and punish it until the unanimous adoption by the General Assembly in 1948 of the convention outlawing genocide.

The United States signed this convention 2 days after its adoption. At this time the United States representative stated that—

> The Government of the United States considers this an event of great importance in the development of * * * cooperation among states for the purpose of eliminating practices offensive to all civilized mankind.

CRIMES AGAINST THE LAW OF NATIONS

There are presently five international conventions outlawing crimes offensive to civilized men: White slavery, traffic in opium, piracy, the circulation of obscene literature, and currency forgery. The destruction of human groups is a far more hideous crime than any of these. We must act now to make the Genocide Convention the sixth international convention to outlaw crimes against mankind.

The foreign policy of the United States today is based on the preservation of peace so as to preserve civilization. Our Government is engaged in rehabilitation efforts throughout the world and is preparing a program for developing those areas whose people live in poverty and primative conditions, all with the hope of establishing the stability and conditions of freedom from fear that make for peace and prosperity.

Surely, the outlawing of genocide as a crime and the establishment of procedures for its punishment is essential to creating the kind of world we want to live in. The United States was in the forefront of the work to adopt the Genocide Convention in the Assembly. It is now our inescapable obligation to ratify the convention immediately as an example to the world.

The National Council of Jewish Women respectfully urges speedy ratification by the Senate of the Genocide Convention.

Thank you.

Senator McMahon. Any questions, gentlemen?

Senator Thomas. No questions.

Senator Pepper. No questions.

Senator McMahon. Thank you, indeed.

Next we will hear from Mrs. Harper Sibley, president of the United Council of Church Women of Rochester, N. Y.

STATEMENT OF MRS. HARPER SIBLEY, PRESIDENT, THE UNITED COUNCIL OF CHURCH WOMEN, ROCHESTER, N. Y.

Mrs. Sibley. I am Mrs. Harper Sibley and I am president of the United Council of Church Women of which there are 10,000,000 Protestant women but I would not suggest they are all members of our organization.

We are, however, organized in every State.

We have gone on record at our national meeting in Los Angeles in October as favoring the passage of the Genocide Convention. A month

from tomorrow we will be having a meeting which we call the World Day of Prayer in over 7,000 communities in the United States and in over 90 countries, starting at the date line and ending at the date line.

PERSONAL OBSERVATION

I would like to speak for just about 6 minutes in regard to three points. No. 1, although two or three of the others have given us the dimensions of genocide, I cannot resist just a personal observation because in 1947 my husband and I were in Frankfurt, Germany, and we went into the vaults of the Reichsbank and on tables which were as extensive as every table as this room, we saw laid out wrist watches, necklaces, diamond brooches, and other jewels which had been taken from the wrists and fingers of women who had been put through the gas chambers and which had been turned over to the United States to try in some way to return them to any relatives or members of the group who had thus been destroyed.

We then saw barrels of trinkets and costume jewelry and then in another corner great containers of the teeth that had been extracted from the people who had thus been destroyed.

Therefore, to me, genocide is not just something written on a piece of paper. It is the people whom I have never been able to forget that were decimated under those circumstances.

NUREMBERG SHOULD NOT BE REPUDIATED

The next summer I spent with the military government in Germany and was in Nuremberg at the time of the two Nuremberg decisions and although I was not there during the hearings, I was in the court when the decision was handed down on the Krupps case and I. G. Farben case and had the opportunity to discuss with many of the German lawyers our right to try German citizens. They would be delighted to have heard some of the questions asked this morning because they would have found themselves in complete agreement that we had no right to go in there as certain people have said, no one else in an international court has any right to judge our actions. But the very fact that we did it, we established a precedent which has something to do with the basis of American law in its interpretation of the establishment of precedents.

Therefore, unless we would repudiate the thing we did at Nuremberg in the convictions of those people that were put to death for the crimes of genocide and thereby make it illegitimate, the thing we did, we must need consider seriously our willingness to accept international law under certain circumstances of precedent which we ourselves have created and to which we gave the dominant leadership.

I would also suggest that the Constitution of the United States is capable of different interpretations and have lived long enough to see that the thing which one year was unconstitutional became constitutional in a decade or two decades.

My third suggestion is that at the moment, as has been said before, we have the moral leadership of the world. We are used to thinking of other groups as being minorities but as one who has been around the world I realize that as you go to India with its 365,000,000 or more;

as you go to China with a census that has never been taken but estimated to be between 400 million and 500 million people, the white man today is a minority.

STAKE IN AMERICA

Personally, I have a great stake in America; I have 6 children and 16 grandchildren. Before I die I would like to see certain things on the statute books of the world under which I would be willing to have my children and my grandchildren judged when those other countries have become conscious of their great strength, and we of the United States and the white people will be a minority, judged by those precedents which we set when we could decide what were the moral values in a world.

As the representative of women, we have the special stake, because we have a special part to play in the creation of human life, and as a member of the Protestant Church, I would suggest behind our Constitution, and underenath it, is a concept of human life on which this country was founded which is a concept of the value of the individual and which is so violated by this thing that we call genocide, that we will have forever lost the moral leadership which is now ours, unless we give our support and our enthusiasm to the ratification of this thing.

I thank you.

Senator PEPPER. I do not believe you appeared before that bar committee or they would have had a different conclusion.

Mrs. SIBLEY. I think Judge Patterson answered many of those questions this morning. When I told my children I was coming here they said, "Who is for genocide?" And I had to tell them just a few lawyers.

Are there any questions, Mr. Chairman?

Senator MCMAHON. That was a very eloquent statement, Mrs. Sibley.

Mrs. SIBLEY. I feel very eloquent on this subject, Mr. Chairman.

Senator MCMAHON. I remember with a good deal of pleasure when you appeared before a congressional committee of which I was a member, sometime in the past.

Mrs. SIBLEY. I appreciate your courtesy today as I did at that time, Mr. Chairman, and I think we won our point, sir.

Senator MCMAHON. Thank you very much.

Next we will hear from Mrs. William Dick Sporborg on behalf of General Federation of Womens Clubs of New York City.

STATEMENT OF MRS. WILLIAM DICK SPORBORG, ON BEHALF OF THE GENERAL FEDERATION OF WOMENS CLUBS, NEW YORK, N. Y.

Mrs. SPORBORG. Mr. Chairman and members of the Senate Subcommittee on Foreign Relations, for purposes of identification, in the record, I am Mrs. William Dick Sporborg, who, as chairman of the Committee on International Relations, was one of the consultants at the San Francisco conference to the American delegation.

For the past 3 years I have been a member of the United States National Commission for UNESCO and ever since my chairmanship of the International Relations, I have been a nongovernmental organizational representative at the United Nations and as such have been at every one of the General Assemblies with the exception of one and I was at Paris at the time that the Genocide Convention was passed.

1947 PHILADELPHIA RESOLUTION

For further identification, gentlemen, I am the chairman of a special committee organized for the National Council of Women with some 40 affiliated organizations who, when it was hostess to the international council of women in Philadelphia in 1947, passed a resolution asking that when the adoption of the convention became in effect, that the national councils would work in their respective countries for prompt signature and ratification.

The resolution was as follows:

Whereas the United Nations has undertaken to outlaw genocide, the mass extermination of national, religious, ethnic, or racial groups, as an international crime; and

Whereas the General Assembly unanimously adopted the Genocide Convention last year and it now awaits ratification by our Senate to which it was submitted in June 1949: Therefore

Resolved, That the board of directors of the General Federation of Women's Clubs at its meeting October 1949 endorses the principle of the Genocide Convention and urges its prompt ratification with adequate constitutional safeguards.

We therefore urge the United States Senate, at this session of Congress, to ratify the Genocide Convention with adequate constitutional safeguards, for the following reasons:

From the humanitarian standpoint of abolishing a barbaric custom periodically practiced throughout the ages, which it believes should, at long last, be boldly outlawed as an international crime by the civilized world of 1950.

WOMEN AND CHILDREN THE FIRST VICTIMS

From the woman's standpoint, since women even unto our own day have been the first victims of genocide as interpreted in paragraphs D and E of article II of the convention. In order to prevent continuity of the victim groups, millions of women have been forcibly sterilized; subjected to compulsory abortion; separated from their husbands. Their children have been decimated or through mass kidnapings have been made orphans of living parents turning family love and affectionate ties into stony despair.

REASONS FOR SUPPORT

Understandably, therefore, we women espouse this action against genocide as peculiarly our cause. We who create life urge the Genocide Convention as a legal instrument for the preservation of life of innocent people.

From the standpoint of removing one of the causes of war: Modern war is the costliest mistake of mankind—and the hope of abolishing war rests on the gradual removal of all its causes.

From the economic standpoint, saving untold millions in money, as survivors must be economically cared for, fed, sheltered, and rehabilitated, as in the instances of many displaced persons, refugees, and the children receiving assistance from the United Nations' international children's emergency fund.

From the standpoint of precedent: The United States of America is an adherent participant in the five already recognized crimes outlawed by international convention, namely, traffic in opium; white slavery; piracy; circulation of obscene literature; forgery of currency.

BAR ASSOCIATION ARGUMENTS

The General Federation of Women's Clubs is aware of the controversy within the American Bar Association. It leaves that debate to legal experts. In touching on the expressed differences of opinion on the legal aspects, the federation expresses its confidence in the unquestionable patriotism, statesmanship, and recognized legal reputation of such men as General Marshall, former Secretary of State, who headed the American delegation when the convention was adopted, and Judge Robert Patterson, former Secretary of War and president of the New York City Bar Association, which endorsed ratification. These men, among others, debate the stand of the American Bar Association, whose opinion we also respect.

CIVIL RIGHTS ISSUE

There is great confusion in the public mind between the civil-rights issue, which is a factional controversy in our country today, and the Universal Declaration of Human Rights of the United Nations, which has not yet arrived at the final draft of its covenant and which cannot be acted upon until a later date, and the Genocide Convention which deals with mass destruction with intent to exterminate and which has been adopted unanimously by the General Assembly over a year ago and awaits only ratification by 20 of its 39 signatories.

The Government of the United States, ever since the overwhelming ratification by the United States Senate of the Charter of the United Nations with only two adverse votes, has iterated and reiterated its support of the United Nations and its principles.

The Genocide Convention was unanimously adopted by the United Nations largely because of our American leadership. The United States is 1 of the 39 signatories. To date five other nations have ratified. The world awaits proof of the sincerity and good faith of the United States of America in the United Nations by ratification of the convention which it helped sponsor.

Finally, the General Federation of Women's Clubs believes that the majority of the women citizens and the women voters of the United States holds the opinion that the very worth of peace must be largely measured by the degree of freedom and justice which it secures for the whole world and its peoples.

AN APPEAL TO MORAL CONSCIENCE

Because of these 8 angles, among others, and because of the traditional belief of this country in the right to protection of minority groups, a right sought by our Pilgrim Fathers on these shores in

their escape from a religious persecution which might well have been a forerunner of genocide, the General Federation of Women's Clubs appeals to the moral conscience of the United States Senate and urges prompt ratification of a genocide convention at this session of Congress.

For still further identification and in the interests of saving time, on behalf of the American Association for the United Nations, Dr. William Emerson, the president, is ill, and Mr. Clark Eichleberger, the executive secretary is out in Chicago; and, as a member of the board of the American Association for the United Nations, they both have deputed me, Mr. Chairman, and members, to record for the record that their board unanimously urges ratification of the Genocide Convention.

If it is possible later and there is time, they would like to testify themselves; but, in the interests of getting them on the record, I have carried out their message.

GENERAL FEDERATION OF WOMEN'S CLUBS

Now, in regard to my testimony for the General Federation of Women's Clubs, with an over-all affiliated membership of 11,000,000, 5,500,000 women are in the United States with a voting membership of 750,000 and 5,500,000 are in 33 other countries, many of the latter burdened with caring for the escaping victims of genocide, is on record as endorsing the principle of the Genocide Convention.

We base our testimony on eight points, some of which have already been touched upon during the day's testimony: and in order to avoid being repetitious I am going to omit some of them, except simply to succinctly mention them.

REASONS FOR URGING RATIFICATION

For the following reasons, we are urging the ratification of the Genocide Convention with adequate constitutional safeguards:

Point 1, from the humanitarian standpoint which has been so magnificently brought out by many witnesses, of abolishing a barbaric custom periodically practiced throughout the ages, which it believes it should, at long length, be boldly outlawed as an international crime by the civilized world of 1950.

Then, I am so grateful that Mrs. Sibley touched on the women's standpoint because point 2 is from the angle of the women of our federation. From the women's standpoint, since women even unto our own day have been the first victims of genocide as interpreted in paragraphs D and E of article II of the convention.

Our third point is from the standpoint of genocide as a contributory cause of war. In an age of uranium bombs and hydrogen bombs and bacteriological bombs, modern war seems to us women to be the costliest mistake of mankind. And the hope of abolishing war rests on the gradual removal of all its causes.

The fourth point is from the economic standpoint, saving untold millions in money. Masses of dead people cannot be productive nor will they advance international trade.

The fifth point has already been touched upon, from the standpoint of precedent, and the fact that the United States is an adherent participant in the five already-recognized crimes outlawed by international

conventions. Senator Hickenlooper and Senator Pepper asked very searching questions, and I think some of those answers might be found in the testimony of Judge Patterson.

Now we are only going to touch on the legal points and we are touching on the legal points, gentlemen, for two reasons: To prove that the clubwomen of this country, while they are idealists, are also realists with their feet on the ground, practical, and to bring out one point that has not been touched in the debate of the legal conflicts.

Our federation is aware of the controversy within the American Bar Association. It leaves that whole debate, however, to legal experts. I am mentioning the fact and pointing these out, realizing as has been brought out that there can reasonably and legitimately be a sincere conflict of opinion, and we want you to know that the General Federation respects the opinion of the others in the bar association who could not agree with the gentlemen who have been previously referred to.

TIME LIMIT OF THE CONVENTION

However, gentlemen, I think one point has not been brought out in this whole conflict. It came to my mind as a result of some of the questions that you have asked. In article XIV of the Genocide Convention it states:

> The present convention shall remain in effect for a period of 10 years as from the date of its coming into force. It shall thereafter remain in force for successive periods of 5 years for such contracting parties as have not denounced it at least 6 months before the expiration of the current period. Denunciation shall be effected by a written notification addressed to the Secretary General of the United Nations.

I call this to your attention because I and the federation, too, believe it was a very good thing for treaties to have a time limit, so that they can be tested out and provisions made. We are not irrevocably tied to this in accordance with article XIV, which I have just read.

More particularly, the General Federation of Women's Clubs is interested in this question, from concern over the great confusion in the public mind and even in the minds of erudite Senators, present company excluded, as to the confusion between the civil-rights issue, which is a factional controversy in our own country today, and the universal declaration of human rights of the United Nations, which is not yet arrived at the final draft of its covenant and which cannot be acted upon until at a later date, and the Genocide Convention, which deals with mass destruction with intent to exterminate and which has been adopted unanimously by the General Assembly over a year ago and only awaits ratification by 20 of its 43 signatories.

To elaborate just a little bit on this point, gentlemen, the Genocide Convention, in our opinion, deals with obliteration, with destruction, and annihilation of peoples. The civil-rights program, as we know it in this country and the declaration, the universal declaration of human rights, deals with a much larger question of political and civil rights of individual people within nations.

Genocide, when it becomes effective, ends extinction of people, but the declaration of human rights is intended to extend and integrate to all of the peoples all over the world the type of privileges that we have enjoyed in this country. That confusion is concerning us very much indeed, and we hope that that will be clarified.

Now point 8 deals with what already has been brought up from the standpoint of morality, sincerity, and good faith.

For the purposes of the record, I am very glad to hand you the documented evidence. I have a copy for each one of you.

That concludes my testimony. I wish to express my appreciation for your patience in listening to me. Are there any questions?

Senator PEPPER. You have covered everything.

Mrs. SPORBORG. That is praise from Caesar, Senator Pepper.

Senator MCMAHON. Senator Hickenlooper?

Senator HICKENLOOPER. I would like to ask you if you would care to amplify your statement a moment ago of the recommendation for the adoption of the Genocide Convention with constitutional safeguards. What did you refer to as constitutional safeguards?

LEAVING LEGAL ASPECT TO LAWYERS

Mrs. SPORBORG. Well, Senator Hickenlooper, I told you we were leaving the legal debate to legal experts. Many of us in the federation believe that article V of the convention does protect and creates constitutional safeguards; but, inasmuch as there was a difference of opinion among the legal minds in the country, we desire to remain objective.

Senator HICHENLOOPER. I was interested in the view on that point as to whether or not that statement meant that in adopting the genocide convention we should remain completely sovereign in our action?

Mrs. SPORBORG. Senator Hickenlooper, I would like to ask you a question: Can we remain completely sovereign in this world, and did we give up part of our sovereignty when we joined the United Nations?

Senator HICKENLOOPER. May I finish my question?

Mrs. SPORBORG. Yes, indeed. I thought you had finished.

Senator HICKENLOOPER. I was trying to seek an answer to my question as to whether or not the constitutional safeguards to which you referred meant that we should keep complete sovereignty over any implementation of this genocide convention or how we would adopt it under the constitutional safeguards. I am personally confused on that issue.

Mrs. SPORBORG. You were not present when Judge Patterson brought in testimony on that point. He gave answers to that with which I would concur.

Senator PEPPER. May I interrupt? In other words, you mean that Judge Patterson pointed out that constitutional safeguards were already contained in the convention?

Mrs. SPORBORG. Yes, in article V.

Senator HICKENLOOPER. Thank you. I will read Judge Patterson's testimony to see whether it contains the answer.

Mrs. SPORBORG. I think it shows how conscientious you are that you are going to read all of the testimony. Thank you.

Senator MCMAHON. Thank you, Mrs. Sporborg.

Next we have a respresentative in the person of Esther Hymer, who is here to talk for the National Federation of Business and Professional Women's Clubs.

STATEMENT OF ESTHER HYMER, ON BEHALF OF THE NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, NEW YORK, N. Y.

Miss HYMER. My name is Esther Hymer, and I am here on behalf of the National Federation of Business and Professional Women's Clubs, Inc., 1819 Broadway, New York, N. Y.

I want to thank the members of this subcommittee for allowing the federation to express an opinion on this very important piece of legislation.

As you perhaps all know, the national federation is made up of employed women, 155,000, scattered throughout this country in 2,800 small communities. Their influence is tremendous; their interest in this question is tremendous; and this federation has been formed particularly to further the interests of business and professional women, and they have found a very deep interest in the work of the United Nations, feeling that through the United Nations and its charter their rights have been advanced as one of the largest minority groups.

The national federation was represented at the conference to establish a world organization in San Francisco in 1945 and was one of the few women's organizations given official status. We have approached the subject of genocide and its convention because of the feeling that in it we are furthering the work of the United Nations toward building a world under law. And, too, this deep interest in the Genocide Convention, I think, also stems from the fact that the national federation in this country is a part of the international federation which is organized in 23 countries, and in those other countries our members were victims of genocide, and they came together in their congress in 1947 and took a very definite stand in favor of the drafting of the convention.

They send out word to the national federations in each country to help work on this convention, to use their influence through their own federations. This interest was crystallized through information that was sent out to their members, and I think did a very excellent piece of work in giving out the basic educational material which sometimes we do not do as thoroughly as we should because, certainly if a national organization goes on record as being in favor of a piece of legislation, that opinion should stem from the informed opinion and desire of its local members, and we feel in this case that this opinion does stem from that expressed opinion because they have not only done so through their own individual statements but in 1948 at the biennial convention through the votes of its individual delegate members went overwhelmingly on record in favor of the convention, feeling that, in so doing, they were not only strengthening the United Nations but were furthering their own particular interests.

RESOLUTION OF APPROVAL

The resolution was as follows:

Whereas the international relations legislative platform of the National Federation (USA) Business and Professional Women's Clubs, Inc., gives full support to the United Nations; and

Whereas the National Federation (USA), as a federation member of the International Federation of Business and Professional Women's Clubs, has a consultative status with the Economic and Social Council of the United Nations; and

Whereas the National Federation (USA) Business and Professional Women's Clubs has carried the proposed convention (treaty) on genocide in its international relations program; and

Whereas we recognize that an international convention (treaty) to outlaw genocide (the mass killing of groups for racial, national, religious, and cultural reasons) is the cornerstone of human rights; and

Whereas the National Federation (USA) Business and Professional Women's Clubs worked vigorously at San Francisco to have human rights included in the United Nations charter: Now, therefore, be it

Resolved, That the National Federation (USA) Business and Professional Women's Clubs, in biennial convention assembled at Fort Worth, Tex., July 4–10, 1948, solemnly requests the United States delegation to the Economic and Social Council of the United Nations assembling in Geneva, Switzerland, July 19, 1948, give courageous leadership in the work in the United Nations for the adoption of an international convention on genocide.

The national federation demonstrated its deep concern for the success of the new world organization by appointing, as a member of the staff, an observer to the United Nations, immediately following the acceptance of the Charter of the United Nations. The duties of the observer are to report to the membership United Nations developments and issues, as well as to present opinions of our members to the United Nations bodies and to the United States delegates to the United Nations.

EARLY INTEREST IN THIS CRIME

The crime of genocide was one of the first world-wide issues to be considered by the United Nations, since the people of many of the member Nations had suffered from its practice.

1947 ACTION

In 1947, during consideration of this question at the second session of the General Assembly, the president of the international federation, which has consultative status to the Economic and Social Council, asked the presidents of all the member national federations to express their opinions on the proposed convention, to the United Nations committees by whom it was being considered.

Attention of our membership was focused on the possibilities of outlawing the mass killing of groups for racial, national, religious, and cultural reasons through our study program and our publications reaching all members.

1948 ACTION

After study, the delegate body at our biennial convention in 1948 adopted a resolution requesting the United States delegate to the Economic and Social Council to give courageous leadership in the adoption of an international convention on genocide. A consistent program has been maintained in order to keep our members informed of current developments.

Although the national federation has among its members many lawyers, we are not primarily concerned with the legal aspects of this convention. Although we have many racial strains represented in our membership, we are not concerned with this question for racial reasons, alone. The implications of this problem, as they affect business and professional women, are the motivating forces implementing our present action.

OF SPECIAL INTEREST TO WOMEN

This convention has a special significance for women because it will internationally outlaw the wanton disruption of families and the separation of children. It has had an even more direct effect on women in business and the professions because genocide has been practiced against them because of their positions in public life.

In Poland, 60 percent of the population wiped out by occupying powers were employed women. The country was deprived of their contribution to advancing the interests of the country and the status of women was degraded by taking from women the trained members of their groups who could work for their advancement.

FRANCISKA F. PLAMINKOVA

One of our leaders against whom genocide was practiced was Franciska F. Plaminkova, member of the Czechoslovak Senate, president of the Czechoslovak Federation and vice president of the International Federation of Business and Professional Women. She was executed by the Nazis not only because of her ability as a Senator but because she was a crusader of many causes including the advancement of the status of women. There were many in our national federations in Poland, Austria, Italy, and Norway, and many other countries, who suffered similar fates.

That great loss was not only an economic loss to Czechoslovakia but it was a great loss to women because in taking out of that group women qualified to be leaders, they lost the leadership which enabled them to carry on the establishment of and the status of women in the different countries. We have found, through watching the developments during the last few years that as countries recognize the status of women and recognize their ability to participate in public life so there you found the extension of freedom and democracy and there you found women not only contributing as equals but in so doing they have enhanced and enlarged the economic value of their country in freedom and democracy.

INTEREST OF PROFESSIONAL WOMEN IN THE CONVENTION

So, to the business and professional women this convention is of particular significance not only as women, but as women that are trained and anxious to go on being trained because if we keep alive this fear of the practice of genocide we are deterring women from attaining leadership and of going on with training knowing that by so assuming leadership in that country, they may someday be the victims of genocide and in putting on this fear, putting on this premium of the willingness to go ahead, we are deterring and putting a blanket on the desires of women to be willing to take this great risk in exposing themselves and exposing their families to genocide.

So, as we look at it the problem is one of concern to women and it is of particular concern to business and professional women, not only because of the deterring of their own personal position, but also because of its great value in putting on the record the kind of a law, the kind of belief, that certainly if a world is to be dedicated to the trained people of the world that in that training and in that belief in train-

ing we have to also have the responsibility of law and the responsibility of assuming leadership in taking the initiative in seeing that this Genocide Convention is ratified.

As long as genocide is practiced, women in all countries will be deterred from advancing to positions of leadership because they know that in so doing they may themselves become victims of genocide.

The Convention on Genocide is one of the first conventions passed by the General Assembly of the United Nations and the first presented to the United States for ratification. In view of the fact that support of the United Nations is a cornerstone of the United States foreign policy and that our delegates have assumed leadership in the drafting and acceptances of the covenant it would seem that its early ratification presents an opportunity to advance our deep concern in establishing in the world an enduring law of nations.

For these reasons and because of other broad social and economic repercussions resulting from mass killings of segments of society, the national federation asks this subcommittee to report favorably the resolution on the Convention on the Prevention and Punishment of the Crime of Genocide to the full Foreign Relations Committee with the recommendation that the committee present it with approval to the Senate at the earliest possible date.

Thank you very much.

Senator McMAHON. Thank you.

Are there any questions?

Senator PEPPER. No questions.

Senator THOMAS. No questions.

Senator McMAHON. Next we will hear from Mrs. Henry Gichner, who represents the National Women's League of the United Synagogue.

STATEMENT OF MRS. HENRY GICHNER, ON BEHALF OF THE NATIONAL WOMEN'S LEAGUE OF THE UNITED SYNAGOGUE

Mrs. GICHNER. Mr. Chairman and members of the committee, I want to express my appreciation for this opportunity to speak before you.

I think possibly it might be more efficacious to repeat some of the arguments that have already been given, but in the interest of time, I will refrain from doing that.

I just want to point out that many times we lose track of the individual in terms of a more vague generalization. We talk about genocide as the killing of thousands of people or millions of people. We lose sight of the forest for the trees many times. We are still all individuals.

It is human nature I think to be unable, many of us, to absorb large figures when we read in the paper of a family being wiped out because of a fire which destroyed their home. We are sympathetic. When we read of thousands of people losing their lives in floods, for instance, which is a natural disaster, we feel very sorry, but in our own ability to absorb the tragedy, the thousands do not mean as much as the individuals.

So, I would like to point out again that genocide is the murder, or it is crime committed upon thousands of individuals.

I speak for 100,000 Jewish women in 480 communities in the United States, again, 100,000 thinking individuals. We urge the ratification of the Genocide Convention by the United States Senate.

CONSIDERATIONS

We respectfully call to your attention the following considerations:

(1) The United States took a leading part in formulating and bringing about the unanimous ratification of the Genocide Convention by the United Nations Assembly in 1948.

(2) The United States should continue its leadership in making this convention operative by a speedy ratification, thus committing ourselves as well as encouraging other countries to follow our example.

The practice of genocide is uncivilized and immoral and should be made a crime punishable under international law.

As citizens of a country founded upon religious and moral principles, and I think many times they are just as important as the legalistic ones, we strongly urge that the United States ratify the Genocide Convention without reservation and do so immediately.

Thank you.

Senator McMAHON. Thank you very much, indeed.

At this time we will hear from Mr. Philip Schiff, Washington representative of the National Jewish Welfare Board.

STATEMENT OF PHILIP SCHIFF, WASHINGTON REPRESENTATIVE, NATIONAL JEWISH WELFARE BOARD

Mr. SCHIFF. Mr. Chairman and members of the committee, it is not very often that those of us who live in Washington and represent organizations dealing with international problems or with our domestic problems such as health, welfare, and education, find ourselves sitting through, as you have done, all day, listening to the kind of testimony that has come before your committee.

I think it is because something of the very spiritual nature has happened in recent years to make it possible for a majority of a Senate committee to sit through, as you gentlemen have so graciously done through an entire session of this kind.

I recall recently as chairman of the United Nations Day program, which our State Department had organized in cooperation with practically every type of organization in this country, church, labor, veterans, women's groups, farm groups, and so on, and I recall in the 3 months we canvassed and blanketed the entire country with all kinds of information in support of the United Nations program to which we as a nation, are dedicated.

It occurred to me, as I sat through the proceedings today that I wish in some way we could have televised what happened today in terms of the kind of people and the kind of organizations and the kind of interests they represented.

I think it is good for the country to go through, shall I say, a spiritual bath of that kind.

Unfortunately, those of us who were here, while we talk in the terms of large numbers that we represent, somehow we have not gotten the complete pulse of the American public.

Senator McMAHON. Let me comment on that for just a minute, please. I am on the Interstate and Foreign Commerce Committee. Last week we held hearings on a proposal for the prohibition of advertising of liquor in interstate commerce, that is, any publication that contained and ad, if this bill were made law, could not be transmitted over State lines. There was in this room, and I do not know what number it would hold, but I assure you when I came in a few minutes late it took about three policemen to take me from the door to a seat here.

There was tremendous interest demonstrated. I just call your attention to the fact that witnesses representing the organizations are here but there are not very many spectators who have come to demonstrate their interest. I am not making hat by way of criticism but to draw an analogy of what happened last week and what has happpened today.

Mr. SCHIFF. May I make a further confession that I decided to get here at a quarter of ten, thinking I might not be able to get in here. I was disappointed at the lack in numbers, but I think we have a responsibility to carry this message far and wide.

I am not going to read my statement because you gentlemen have been very patient and have sat through such a day as this, but I would like to express one or two points in connection with the Genocide Convention.

The organization I represent is the YMHA and YWHA throughout the country 350 of them, with a membership of 445,000 and they represent for the most part young adults, and to me, as I have read the story of genocide and have sat in on all kinds of hearings of our Senate Foreign Relations Committee and the House Foreign Affairs Committee, as they have dealt with the Marshall plan and ECA and all of those subjects, it seems to me that there is one aspect of the problem that some of us have a tendency to overlook and that is that this citizenry that we talk about in abstract terms, are the kind of people who will have to carry this on later.

YOUNG PEOPLE THE MAJOR VICTIMS

My presentation is not going to be an emotional appeal except to point out that as you look at the history of genocide and persecution throughout the ages I think you will find that the young people, the children, the young manhood and the young womanhood, practically outnumbered the number of adults who went through that process.

I think we have a tremendous job to do on an educational basis to make sure that our young adults, be they Jew, Catholic or Protestant, be brought into this discussion so that we can say that we have an informed public.

I call that to your attention because I think that all of the organizations would agree that youth does have a tremendous stake in this problem.

Secondly, it seems to me, Mr. Chairman, that the testimony that had been presented here today has pretty well canvassed the problems, be they legalistic, be they spiritual or be they moral and the one concern I would have is in the area of how fast and how soon can we get this kind of a treaty through the Senate? I do not think there

is any question concerning the unanimity of opinion in favor of the convention.

The few lawyers who were opposed to the convention, as far as I know, are the only opposition that we have to contend with.

I will not detail you much further, Mr. Chairman, except to point out that I know the Senate has a very busy calendar, and with the many issues before it, the one concern that some of us might have is whether or not this particular convention which is terribly important at least to a majority of the American people, I believe the question is whether it can get before the Senate in due time for debate and for action at this session of Congress because other nations are waiting to see what we in this country do.

My concern is, how fast can the Senate of the United States react to American public opinion which I believe is preponderantly in favor of this convention.

Thank you very much.

Senator McMAHON. Thank you, Mr. Schiff.

(The matter referred to is as follows:)

STATEMENT PRESENTED BY PHILIP SCHIFF, OF NATIONAL JEWISH WELFARE BOARD, ON THE GENOCIDE PACT

Mr. Chairman and members of the committee, as Washington representative of the Jewish Welfare Board, I deem it a privilege and honor to urge you, on behalf of my organization, to favorably report to the full Senate the request of the President of the United States for affirmative action on the International Convention on the Prevention and Punishment of the Crime of Genocide.

The Jewish Welfare Board, with its 350 Jewish community centers, whose membership totals 445,000 people throughout the United States, has for many years been interested in promoting the welfare of the American way of life. Because of our great concern for America's influence in world affairs, and because we see in the United Nations the sole hope for peace, we have been consistent supporters of the United Nations and all of its provisions which concern human rights and which give international recognition to the sanctity of human life and the right to existence of all national, ethnical, racial, and religious groups.

It is morally imperative that the convention be ratified by our great country, so that the import of our affirmation will have positive reverberations around the world and through its moral leadership help set a pattern for the rest of the world to follow.

When the Legal Committee of the General Assembly of the United Nations on December 11, 1946, presented its resolution to the Assembly, which was unanimously adopted, declaring that "genocide is a crime under international law," the stage was set for mankind to assert itself on the highest humanitarian plane and to offer a tension-torn world a concept of a new morality among nations based upon the principle of "dignity among nations."

It is inconceivable that there should be anything but unanimity of American public opinion in favor of the convention which is aimed at destroying any concept which might still prevail among men and nations that it is acceptable to "destroy" in whole or in part, a national, ethnic, racial, or religious group; to kill members, or cause serious bodily or mental harm to members of a group; to impose measures intended to prevent births within the group, etc. Certainly, this Nation which has fought two wars, giving unstintingly of its manhood and wealth to preserve man's dignity, as a creature of God, will not hesitate to give its blessing to a covenant which would outlaw such barbaric and organized crimes.

The amazing and shocking realization that man has done nothing on an organized basis to prevent genocide, prior to the adoption of a covenant by the United Nations General Assembly, should galvanize our Senate into action so that it might help write world history. The past casts up before our eyes enough evidence to blast once and for all any opposition to the approval of the covenant. We have but to think of the million Christian Armenians who were victims of

genocide in 1915–16; the thousands of Christian Greeks who were killed in Smyrna in 1922; the devastation of a Christian community of Assyrians in one night in Iraq; the 6,000,000 Jews and more than 2,000,000 Poles who were wiped out by the Nazis; the destruction of Lidice, and many other such atrocities, to point up the crying need for international action which would forever ban such practices.

We realize that the road which the various nations took in arriving at the decision to recommend the genocide pact to the nations of the world was not an easy one to traverse. In a world beset by many problems, any one of which contains within it the seed of an explosive situation, the ratification of the genocide convention can well serve as an example of the manner in which men and nations can arrive at a decision which can bring to people everywhere a sense of security, despite the many basic differences which exist among nations. It is the kind of security that untold millions now and in the future have a right to expect from their government.

The organization I represent has full confidence in the future of the United Nations. As we read the charter of the United Nations and its purposes, we see the answer to humanity's search for peace clearly set forth in article 1 of the charter, viz, "To achieve international cooperation in solving international problems of economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

The Senate of the United States can continue to add luster to its already brilliant history by adding an additional page covering the ratification of the genocide convention.

Senator McMahon. Our final witness today is Miss Agatha La Londe, representing the National Association of Women Lawyers.

STATEMENT OF AGATHA LA LONDE, REPRESENTING THE NATIONAL ASSOCIATION OF WOMEN LAWYERS

Mr. La Londe. Mr. Chairman and members of the committee, I am representing the National Association of Women Lawyers. We have members, I believe, in every State of the Union and I am speaking for the approval of the genocide convention.

In agreement with the committee's request that statements be brief, I shall limit my time to 5 minutes or less.

At its annual meeting, September 4, 1949, it was resolved unanimously that the National Association of Women Lawyers urge the Senate approval of the genocide convention.

REASONS FOR SUPPORTING THE CONVENTION

Some of the reasons we believe Congress should approve the convention are:

Point 1: The United States has in effect already approved broadly the principle of international punishment of acts similar to those enumerated in the genocide convention by giving leadership to the Allies in orginizing the Nuernberg trials.

The Genocide Convention applies not only in time of war when the sovereignty of an occupied country is suspended, but also in time of peace between sovereign states, and therefore the scope of the Genocide Convention must be, and is, more limited than the Nuernberg law. The essential is to proclaim the rule of law in international relations, so that anyone found guilty of genocide could not invoke the lack of law to punish him. This purpose appears at this time to be completely fulfilled by the Genocide Convention.

Point 2: The acts enumerated in article II of the convention are directed against national, racial, religious, and ethnical groups of which a government or a powerful group does not approve. Even if these acts are prohibited by domestic law, such a prohibition is not sufficient and they can be dealt with adequately only by international law.

Point 3: Congressional approval of the Genocide Convention will not automatically affect any of our domestic laws or our Constitution. Under article V of the convention our domestic laws remain in status quo unless and until Congress enacts further legislation, stating the punishment to be meted out in our domestic courts to one found guilty of any of the offenses enumerated in article II of the convention. In the event Congress approves the convention it in effect would say to the people of the United States:

This is a moral experiment. A 10-year experiment. If it proves a good experiment you can, after it has been in effect for 10 years, continue it for 5-year periods, thereafter (art. XIV). You have 9½ years to decide whether you want to continue the experiment. To discontinue it, you, through your appropriate official of your Government, must 6 months before the expiration of the current period so notify the Secretary-General of the United Nations in writing (art. XIV). And, you may, at any time, request revision of the Convention by official notification to the UN (art. XVI). However, you cannot continue it beyond the current period unless fifteen other Nations remain parties to the experiment (art. XV).

Point 4: Our last, but not least reason for urging the approval is because the commission of any of the offenses set out in the Genocide Convention is looked upon by the people of this enlightened Nation of ours, as an affront to the Creator.

In closing may I respectfully remind the committee that the eyes and hopes of the peoples of the world are in this room today.

Thank you for granting me this time to speak.

Senator McMahon. Thank you very much.

This concludes the list of witnesses for today. It is our intention to go forward tomorrow with another group of witnesses, some in the morning, proponents, and some in the afternoon, more particularly the American Bar Association in opposition.

I have been informed that maybe we will have a full Foreign Relations Committee meeting in the morning. In fact, I have been assured of a full meeting. The Secretary of State, I understand, is going to appear tomorrow. In view of that, we will start at 9:30 tomorrow morning and will hear for an hour and then we will have to make plans as to resuming.

As I understand it, this room is going to be occupied tomorrow morning by the Joint Committee on the Economic Report which is going to commence the steel hearings. This committee, in accordance with the agreement which we have hitherto made will meet at 9:30 in room G–16 of the Capitol, in the Interstate and Foreign Commerce Committee room.

(Thereupon, at 5 p. m., the subcommittee recessed to reconvene at 9:30 a. m. January 24, 1950, in room G–16, the Capitol.)

THE GENOCIDE CONVENTION

TUESDAY, JANUARY 24, 1950

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
SUBCOMMITTEE ON THE GENOCIDE CONVENTION,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 9:30 a. m., room G–16, United States Capitol, Senator Brien McMahon (chairman of the subcommittee) presiding.

Present: Senator McMahon.

Senator MCMAHON. You may proceed, Mr. Ruttenberg.

STATEMENT OF STANLEY RUTTENBERG, DIRECTOR, DEPARTMENT OF EDUCATION AND RESEARCH, CIO

Mr. RUTTENBERG. I have a brief statement, Senator, which I shall submit in the name of the secretary-treasurer of the CIO, Mr. James B. Carey. With the committee's approval, I should like to read it.

Senator MCMAHON. It would be much better if you could summarize it, Mr. Ruttenberg. We can all read, and this is going to be in the record.

Mr. RUTTENBERG. Might I just read from one or two parts of it in summary? That wouldn't take more than just a few minutes.

Senator MCMAHON. Don't misunderstand me, Mr. Ruttenberg. I want you to have all the time that you wish.

Mr. RUTTENBERG. It is perfectly all right. I understand that time is pressing, and I wouldn't take but a few minutes.

The CIO urges the ratification of the Genocide Convention and expresses the hope that all the nations of the world will follow soon the American lead.

IMPORTANCE TO LABOR

We urge ratification for some of the following reasons, most particularly point C of article 2, which reads:

> deliberately inflicting on the group, conditions of life, calculated to bring about its physical destruction in whole or in part—

is most significant and it meets the needs of our times in terms of our relationship to dictatorial regimes which threaten our internal security today and might threaten our economic position in the world tomorrow.

There are very important economic implications in genocide to labor. If a government has decided to destroy a nation and is transferring the population to slave-labor camps or to salt mines or gold mines, then the deportees are compelled to work constantly. There

is no methodical care, no concern about the destruction of human substance. These slaves are compelled to produce and to produce and to produce endlessly until they die, at which time they are replaced by other slaves. A regime which employs the genocidal methods can outproduce the world in terms of goods for sale. On a free market, no free industrial society can compete with a genocidal organization of labor.

Might I just conclude, then, by saying if there might be some shortcomings in this convention, they will disappear, we hope, by way of interpretation, as happens also in the case of conventions enacted by the International Labor Organization. We must be patient when we embark on a big humanitarian task. However, it appears clear to all of us that the ratification of the Genocide Convention by the United States is a must, and we have decided to leave the jungle to build a better world based upon law and justice. Therefore, I hope that this Senate subcommittee recommends ratification to the full committee and, in turn, the Senate, and that the Genocide Convention becomes operative.

SLAVE-LABOR CAMPS

Senator McMahon. The slave-labor camps haven't made much in the way of goods for sale on the markets of the world.

Mr. Ruttenberg. They haven't yet, but there is always that potentiality involved, and certainly up to the present time the slave-labor camps that first were operated by Hitler and now being operated by Stalin—the Russian Government in the Siberian area, through the transportation of the people of the Baltic countries, such as Lithuania and Latvia, and transporting them into Siberia and forcing them to work in salt mines, is in and of itself practicing genocide in terms of attempting to completely extinguish the people of the Baltic nations.

Senator McMahon. I have no doubt that practically all of their gold with which they buy goods in the markets of the world that they can reach is mined with slave labor, as the uranium in Czechoslovakia. They use slave labor there.

Thank you very much indeed, Mr. Ruttenberg. The whole statement will, of course, be printed in the record.

Mr. Ruttenberg. Thank you very much.

(The statement referred to is as follows:)

TESTIMONY OF JAMES B. CAREY, SECRETARY-TREASURER OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, IN SUPPORT OF RATIFICATION OF THE GENOCIDE CONVENTION

The Congress of Industrial Organizations urges the ratification of the Genocide Convention and expresses the hope that all the nations of the world will follow soon the American lead This convention will become a useful instrument in the community of nations for establishing standards of human decency throughout the world. In urging ratification, I want to present on behalf of the Congress of Industrial Organizations the following reasons

1. Every civilized human being must be deeply shocked by the abhorrent crime of genocide which is a blot on our civilization. It is a cowardly crime directed against innocent men, women, and children.

2. The Congress of Industrial Organizations was deeply interested in outlawing this crime since the beginning of the action taken by the United Nations. Through the director of our Office of International Affairs, Mr. Michael Ross, the Congress of Indutsrial Organizations urged, early in 1947, several United Nations delegations to support the Genocide Convention. The Congress of Industrial Organizations repeated its appeal to the United Nations to adopt the Geno-

cide Convention during the assembly in 1948. Many local Congress of Industrial Organizations unions followed with great interest the action of the United Nations, and gave expression of their approval of this action in meetings and discussions.

3. From the point of view of the Congress of Industrial Organizations, point C of article 2, which reads "deliberately inflicting on the group, conditions of life, calculated to bring about its physical destruction in whole or in part," is most significant, and it meets the needs of our times in terms of our relationship to dictatorial regimes which threaten our internal security today, and might threaten our economic position in the world tomorrow.

4. The crime of genocide is especially abhorrent and dangerous to labor people. When dictators start a genocide campaign, they immediately destroy the free labor leaders. The concentration camps in Nazi Germany were full of labor leaders who were subjected to tortures and death.

5. The Congress of Industrial Organizations considers the function of labor in society to be constructive and noble. Labor has contributed to building the wealth of America, because those engaged in this task were free and eager to do a job for a country which they love. The Congress of Industrial Organizations considers it a grave danger to our civilization when the function of labor is transformed into an instrumentality of servitude and death. Both Hitler and Stalin organized the greatest machinery for literally squeezing the blood out of human beings for two purposes: first, to get human energy without pay and, secondly, to kill, through overwork, the undesirable peoples. The population of slave-labor camps in Germany reached almost 11,000,000. If Hitler had not been destroyed, half of Europe would have been genocided in these camps. The number of inmates, including those from the Baltic nations in the Siberian slave-labor camps, including the salt mines, is certainly higher. In the past two decades we have witnessed and are continuing to witness an appalling spectacle of nearly 30,000,000 human beings who have undergone and are still undergoing the tortures of genocide.

6. There are very important economic implications in genocide to labor. If a government has decided to destroy a nation and is transferring the population to slave-labor camps or salt mines, or gold mines, then the deportees are compelled to work constantly. There is no medical care and no concern about the destruction of human substance. These slaves are compelled to produce, and produce, and produce—endlessly, until they die, at which time they are replaced by other slaves. A regime which employs the genocidal methods can outproduce the world in terms of goods for sale. On a free market, no free industrial society can compete with a genocidal organization of labor.

7. The Genocide Convention is a product of our times, full of turmoil, confusion, and cruelty. However, the pathological situations in world society have occurred in the past before Hitler and Stalin and might well occur in the future. The Genocide Convention looks forward to future generations which will need protection from the odius scourge of genocide. There is a powerful moral and political weapon in the Genocide Convention—to be used against any nation, be it Communist or not, which always looks for new victims. As you know, the Congress of Industrial Organizations is engaged in a bitter fight against communism. In this fight it is very important to show the real nature of the communistic acts. These acts, being monstrous, must be labeled as crimes. If a statesman commits a crime, he is no longer a statesman but a criminal, although he may not as yet have been punished. The stigma of crime is very important and telling. If a state engages in crime which is labeled as such, it outlaws itself in the eyes of those who might look at the state with a certain sympathy. These elements of legal condemnation are of the greatest political value. Moreover, the possibility of bringing up a genocide case in the United Nations or in the World Court of Justice in The Hague, to which all civilized nations have already adhered, is of immense value. The Genocide Convention does not provide for trial of individuals by international penal tribunals, but it provides for the submission of cases of violation of the convention by states to the World Court. Governments, like individuals, do not like to see dirty linen washed in public. It is the intent of the Genocide Convention that every nation undertake to punish individuals for the crime of genocide in its own domestic courts.

8. If there might be some shortcomings in this convention, they will disappear, we hope, by way of interpretation, as happened also in the case of the conventions enacted by the International Labor Office. We must be patient

when we embark on a big humanitarian task. However, it appears clear to all of us that the ratification of the Genocide Convention by the United States is a must if we have decided to leave the jungle and to build a better world based upon law and justice.

STATEMENT OF MICHAEL STRAIGHT, AMERICAN VETERANS COMMITTEE

Mr. STRAIGHT. I have no prepared statement, sir. I have a few notes. I realize that time is very short, and I would like to limit myself to the heart of what I have.

Senator MCMAHON. I want every witness to give what he thinks has not been given before and what he thinks will be helpful to the committee.

Mr. STRAIGHT. I will try to do that.

I represent a veterans' organization which is a leadership group of veterans of the Second World War. As veterans, we have seen the impact of genocide. As veterans, we were expendable in a war fought for and against a right of a people to destroy other peoples. As veterans, we are the ones who will fight again if war comes; in fact, the constitution of the organization I represent pledges every member to fight, if he is able to fight, in another war. For that reason, as veterans, we have a special interest in attacking the causes of war. It may cause war when the hatred of one people for another people leads to ungovernable violence. It may cause war when a dictatorship destroys internal opposition or excites external aggression in order to maintain itself. In the case of totalitarian regimes, genocide is obviously the indispensable means to aggression and one of the major objectives of aggression. It serves first in arousing an aggressive spirit; second, in justifying expansion by force: third, in consolidating conquests. Without the prospect of genocide, the dictator could not contemplate aggression or even seize and hold power.

GENOCIDE—A PRODUCT OF AGGRESSIVE ATTITUDE

In this convention, we are concerned, of course, with the act of genocide, and yet, in all honesty, we admit at least that the act is less the cause of war than the warlike and aggressive attitude which gives rise to the act. We cannot, of course, undertake to legislate against hatred, prejudice, and an aggressive intent. The effort was made in the debates on genocide and rightfully foresaken. We must, however, undertake to discourage these emotions by recognizing as criminal their fruits of violence. There is ample evidence that this recognition goes far to diminish those evil sentiments and minimizes the far harder task of seeking to legislate against attitudes, however dangerous they may be.

The American Veterans Committee has recognized that communism in its basic attitude and intent endangers world peace. We are pledged to combat that attitude. We are committed, however, to the belief that the best method to combat it is to cut down the potential of communism by raising living standards, to arouse among all peoples an awareness of human dignity and human inviolability and to establish a regime of world law.

We accept fully the conclusion of the President's Commission that America's security can be found only in the elimination of war. We

accept fully the further conclusion that war can be eliminated only by law. For this reason, we believe the charter of the United Nations must be strengthened; but, we add, before it is strengthened, it must first be fully applied. That surely is the purpose of the Genocide Convention.

THE UNITED STATES AND THE GENOCIDE CONVENTION

America led in the formulation of the principle of genocide. America led in the Assembly debates which finally produced the adoption of the Genocide Convention. Now the convention is returned to America as the first major step in ratification since the United Nations Charter. We recognize, of course, that the Senate has the right and the duty to pass on all treaties submitted to it. But since the convention carries out the terms and purposes of the United Nations Charter, already ratified by the Senate and supported by the bipartisan foreign policy, the obligation of the Senate, it seems to us, is clear.

Today, the United Nations, according to its Secretary General, faces the gravest crisis in its history. A large part of its membership is boycotting its councils as a means of applying political pressure. If the United States should now reject or ignore the Genocide Convention, it seems to us that that would be a cruel blow to the United Nations. Ratification, on the other hand, will be one much-needed reaffirmation in its future at this critical time.

Justice Holmes appears to have presided at least in spirit over these sessions. As members of the American Veterans Committee, we believe that ratification is part of the policy that alone can save peace, a policy of reliance on what Holmes once called the contagion of courage. Thank you, Senator, for permitting us to testify.

Senator McMAHON. Thank you, Mr. Straight. That was a very succinct statement. You will be interested to know, Mr. Straight, that some of the comments that you have made will probably be of interest to the subcommittee of the Foreign Relations Committee that is considering the so-called World Government and Atlantic Union proposals.

Mr. STRAIGHT. Yes, sir. We intend to testify on those at a later date.

Senator McMAHON. The dates for those hearings have not been set. They will be held under the chairmanship of Senator Thomas of Utah.

Mr. STRAIGHT. Thank you, sir. We will be glad to testify.

STATEMENT OF L. H. PASQUALICCHIO, NATIONAL DEPUTY AND OFFICIAL REPRESENTATIVE, SUPREME LODGE OF THE ORDER SONS OF ITALY IN AMERICA

Mr. PASQUALICCHIO. Mr. Chairman, I wish to introduce myself. I am L. H. Pasqualicchio, of Washington, D. C., national deputy and official representative of the Supreme Lodge of the Order Sons of Italy in America. In behalf of our supreme venerable, the Honorable George J. Spatuzza, of Chicago, Ill., who is unable to be here personally, I am privileged to present this statement to this honorable committee regarding the Genocide Convention ratification, in the name of our association.

In filing this statement, I wish to emphasize the fact that we desire to go on record as favoring the ratification of the Genocide Conven-

tion by the United States Government. We believe that the interest shown by the United States Government in these hearings to control the crime of genocide will receive favorable reaction by other civilized nations. We should take the leadership in a movement of this kind, where the rights and liberties of mankind throughout the world are at stake. Today, international society looks to America for protection and salvation. People all over have implicit faith and confidence in our sincerity to do what is right for mankind, and we believe that offenders should be punished through the processes of specific international laws which must be created and adhered to by all civilized nations.

I am sure and confident that the crime of genocide perpetrated against innocent people has drawn universal contempt and disapproval; we therefore respectfully appeal to this honorable committee to approve and recommend to the United States Senate the immediate ratification of the Genocide Convention.

I take pleasure in filing this official statement in the name of our organization.

Senator McMAHON. Thank you very much, sir.

(The statement referred to is as follows:)

STATEMENT MADE BY THE ORDER SONS OF ITALY IN AMERICA

WASHINGTON, D. C., *January 24, 1950.*

Hon. BRIEN McMAHON,
Chairman, Senate Subcommittee on Foreign Relations.

MR. CHAIRMAN AND COMMITTEE MEMBERS: * * *

The views expressed herein are the true sentiments, sincere opinions, and desires of the national officers and members of our organization, as well as of the 7,000,000 Americans of Italian origin residing in the United States.

I wish to explain to the distinguished members of this committee that the Order Sons of Italy in America, organized over 50 years ago, is 100 percent American in spirit and purpose. We inculcate our members with the democratic ideals enunciated in the Declaration of Independence and the Constitution of the United States. Our members are taught the ideals of liberty, fraternity, and equality under law, and, above all, our cherished American way of life. Our membership is composed of men and women residing in America and of Italian origin of both the first and second generations, all of whom are United States citizens, voters, property owners, and taxpayers. We have State, subordinate, and affiliated lodges in 34 States of the Union, with offices in Washington, New York, and Chicago.

We wish to state that we fully endorse and approve the Universal Declaration of Human Rights as officially adopted by the United Nations General Assembly in Paris, December 10, 1948, setting forth certain definite human principles by which all civilized peoples of the world may be able to promote universal respect and consideration for mankind.

We also wish to express our approval of the International Convention for the Prevention and Punishment of the Crime of Genocide, unanimously adopted by the United Nations General Assembly in Paris, December 9, 1948, declaring officially and universally that the crime of genocide is of international concern.

The deliberate destruction of human beings with the specific purpose and intent of destroying certain groups, races, or religions is barbarous and uncivilized. We believe that every individual, regardless of nationality, color, or creed, should enjoy equal rights of life, freedom, and justice.

Genocide was openly resorted to in the Second World War when over 3,000,000 Poles and 6,000,000 Jews were destroyed by the Nazis. History gives many examples of genocide, such as the slaughtering of the early Christians by the Romans, as well as the persecution of Christians in the Balkans in the nineteenth century, and the murdering of millions of Armenians by the Turks in the First World War.

The officers and members of the Order Sons of Italy in America, citizens of this great democratic Government of the United States, believe in the true

concept of the brotherhood of man. We believe that people throughout the world should not be denied the right of existence, and that the extermination of certain human groups tends to destroy our present civilization. We accept the universal opinion that genocide should be branded as an international crime and be placed under direct supervision of international law.

Peace and happiness cannot be established amongst all peoples of all nations unless law and order are again restored so that society as a whole is free of fear and criminal persecution. The only way that human conscience can redeem itself is by creating a legal method of prosecution and condemnation of those who resort to the barbarity of genocide.

We are confident that the crime of genocide, perpetrated against innocent people, has drawn universal contempt and disapproval, and we, therefore, respecifically appeal to this honorable committee to approve and recommend to the United States Senate the immediate ratification of the Genocide Convention.

GEORGE J. SPATUZZA, *Supreme Venerable,*
Chicago, Ill.
By L. H. PASQUALICCHIO, *National Deputy,*
Washington, D. C.

Senator MCMAHON. Next we have Mr. DeWitt Miller, representing the Church of the Brethren.

Is Mr. Miller in the room?

(No response.)

Senator MCMAHON. Mr. Frank B. Frederick, general counsel, American Unitarian Association.

Is Mr. Frederick in the room?

(No response.)

Senator MCMAHON. Mrs. Eunice Carter, representing the National Council of Negro Women.

STATEMENT OF MRS. EUNICE CARTER, NATIONAL COUNCIL OF NEGRO WOMEN

Mrs. CARTER. I have a very brief statement that I would like to read into the record on behalf of the National Council of Negro Women.

POSITION OF NEGROES IN THE UNITED STATES NOT INVOLVED

At the outset, let me say that the National Council of Negro Women is under no misapprehension as to the meaning of genocide or as to the implications of the Genocide Convention which is now before the Senate for ratification. The situation of the Negro people in this country is in no way involved. The lynching of an individual or of several individuals has no relation to the extinction of masses of peoples because of race, religion, or political belief.

Aside from the moral and legal issues involved, which have been and will be touched upon by many others, our interest in this convention is threefold.

REASONS FOR SUPPORT

Firstly, we come here because we are women who are working with women throughout America and the entire world to bring about peace and security everywhere. Women and children, weak and defenseless, are usually the first victims of genocide. They are the keepers of the future of any race of people. With all of them, wherever they are found, we stand united to work for their ultimate security in the homelands of their birth or choice.

Secondly, we are members of a minority. The victims of genocide

are minorities. There is no safety for any minority anywhere so long as their extinction goes unchecked and unpunished. The United States of America has an opportunity to give to the minorities of the world new hope and new courage by ratifying this convention.

Our third interest is that we are Americans. We have pride in our great Nation and in its leadership in world affairs. We voted for this convention. More, we were prominent in its promulgation, but we have not ratified it. It cannot become law until 20 nations have ratified it or otherwise adhered to it. The United States takes leadership in military and economic affairs, but it cannot maintain the respect and trust of nations or of peoples unless it takes leadership in moral courage. Not to ratify the Genocide Convention in the circumstances, would leave us defenseless against a charge of lack of such courage. Thank you.

Senator McMAHON. Thank you very much, indeed.

Next is Judge Gunther, Appellate Court of Pittsburgh, American Committee for the Investigation of the Katyn Massacre, Inc.

(No response.)

Senator McMAHON. Rabbi Ely Pilchik, Central Conference of American Rabbis?

(No response.)

Senator McMAHON. Dr. Abraham Shusterman, representing the Synagogue Council of America?

(No response.)

Senator McMAHON. Mr. Charles W. Tillott?

(No response.)

Senator McMAHON. Mrs. Orris Robinson, Women's Division of Christian Service, the Methodist Church?

(No response.)

Senator McMAHON. Mr. A. Vorspan, the National Community Relations Advisory Council?

(No response.)

Senator McMAHON. Are there any other witnesses in the room who have asked for an opportunity to be heard?

All right, sir, will you kindly step up, please?

STATEMENT OF DR. DEWITT MILLER, MINISTER, WASHINGTON CITY CHURCH OF THE BRETHREN

Dr. MILLER. I am DeWitt L. Miller, minister of the Washington City Church of the Brethren. At the request of Mr. Harold Row, the executive secretary, I am representing the Brethren Service Commission, which is the social service agency of the Church of the Brethren with headquarters at Elgin, Ill.

It is a pleasure and privilege to appear on behalf of the proposal of the President and of the State Department to the effect that our Government ratify the Convention of the United Nations dealing with the prevention and punishment of the crime of genocide.

Our denomination has 185,000 members. We have been told by the various cooperating relief organizations that we wield an influence out of proportion to our size because of our willingness to be known as one of the historic peace churches and because of our extensive program of relief and rehabilitation. For reasons of conscience based

upon our understanding and interpretation of the New Testament, our church has believed and taught that all life is sacred, all men are children of the same heavenly Father and that the taking of human life for any reason whatever is a crime against heaven.

Our church before, during, and since World War II has carried on relief and rehabilitation work in the countries of Europe, where the sight of destroyed property and blasted lives has confirmed our conviction that mankind must find a better way than the way of war. Our workers by word of mouth and by visual aids have brought to the attention of our people the brutalizing effect and far-reaching tragic consequences of genocide.

OPPOSED TO MASS MURDER

Consistent with our belief, we have cried out against the mass murder which has been perpetrated in our time against cultural and religious groups and which has violated all the humanitarian sensibilities of civilized people everywhere. We applaud the efforts of the United Nations upon the adoption by its General Assembly on December 9, 1948, of a convention designed to outlaw all efforts of men or groups of men to exterminate or mutilate by any means whatever large numbers of their fellowmen, either in war or in peace.

We hoped that our Nation, which, since its beginning, has been committed to the highest ideals of human rights, might be, with the unanimous consent and support of all high-minded people, the first to ratify this effort to bring under the ban of world-wide disapproval the crime of genocide, a crime against both heaven and humanity.

Years ago, humanity decided it was a crime for one man to take the life of another. Why it is not a million times worse to kill a million men? And when such action is deliberately taken and directed against certain cultural, racial, economic, political, national, or religious groups, it is high time that all thinking people, and especially those in a democratic nation such as ours, should take legislative action designed to curb, outlaw, and punish such madness.

Therefore, speaking as a minister and as a representative of my church, I say we approve the recommendation of the President and of the State Department, and urge your committee to in turn recommend favorable action upon the Senate of the United States.

Senator McMAHON. Thank you very much indeed, sir.

Senator McMAHON. Suppose we take a 5-minute recess.

(Whereupon, a short recess was taken.)

Senator McMAHON. I would like to have Mr. Fisher come up for just a moment before we begin.

STATEMENT OF ADRIAN FISHER, LEGAL ADVISER, DEPARTMENT OF STATE

U. S. S. R., UKRAINIAN, AND BYELORUSSIAN S. S. R. RESERVATION

Senator McMAHON. Mr. Fisher, the U. S. S. R. has ratified the convention, I understand, with a reservation on article 9.

Mr. FISHER. As I understand it, they have not yet ratified it.

Senator McMAHON. I am sorry, but they reserved when they signed, did they not?

Mr. FISHER. They did.

Senator MCMAHON. We have their reservation before us. As regards article 9, the U. S. S. R. does not consider the provisions of article 9 as binding upon itself. These provide that disputes between the contracting parties with regard to the interpretation, application, and implementation of the present convention shall be referred for examination to the International Court at the request of any party that was in dispute and declares that as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application, and implementation of the convention, the U. S. S. R., and so forth, will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

Do you wish to make any comment on that?

Mr. FISHER. It is, first, consistent with the position that the Soviet Union has always taken with respect to the International Court and their unwillingness to have any international body make an adjudication as to whether or not they have lived up to their international obligations. It also has the effect, both under its terms and also, I believe, under the statute of the Court, article 36, of making the Soviet Union and also the Ukrainian Soviet Socialist Republic and Byelorussia, which had reservations in identical terms, unable to raise before the Court, without a specific argeement of all the parties to the case, any questions of interpretation under the Genocide Convention, should it come into effect, that is, not just with reference to themselves, but charges made by them against others.

I am not commenting on that in terms as to whether or not that is necessarily good or bad, but that is the effect of this reservation. Neither of these three countries would, by the terms of this reservation or, in my opinion, also by the terms of the statute of the Court itself, be in a position to call upon the Court for an adjudication under the Convention without the specific agreement of the parties in a specific case.

UNITED STATES INTERPRETATION OF ARTICLE 9

Senator MCMAHON. How about our reservation which was suggested by the Acting Secretary of State, I believe?

Mr. FISHER. Yes, sir. That is on page 6, the middle of the page. One minor point, sir, in terms of a comment: That is not a reservation. At the risk of appearing technical, there is a difference in terms of the effect of which one it is. Reservation is based on the theory that this is something other than what was agreed to and has to be resubmitted to the other parties of the Convention to see whether they accept that change in the terms. It is like we used to say in contracts, a counter-offer. An understanding is not the same thing. It merely puts other people on notice as to what we interpret the proper meaning of the convention to be. I believe this particular understanding is pretty clear, that it has never been considered to be the understanding that this Convention would permit a state to be held liable in damages for injuries inflicted by its own nationals, inflicted on it by its own nationals. That does not mean that those injuries would not result in a determination by the International Court which would make a coun-

try stand convicted before the bar of international opinion as a treaty breaker.

Senator McMAHON. What was the factual situation that the Secretary had in mind when he made this understanding?

Mr. FISHER. There had been a proposal and some discussions in the legislative history which had led to the conclusion that some governments might think that this Convention would create this liability. We just wanted to make it clear that it did not, and the statement at the top of page 6 indicates the position that we took in the Legal Committee of the General Assembly, and the proposed understanding is just carrying that out.

Senator McMAHON. I confess, I have difficulty in conjuring up the kind of a factual situation to which it is supposed to apply or could apply.

Mr. FISHER. The only possible situation in which it could apply is just to make it absolutely clear that this wasn't a damage situation. This was really designed as a preventative action not to establish civil liabilities. I personally don't think that it is a very serious question, and I can't conceive of it applying myself, but it was intended to be quite clear that the responsibility of the state is to be used in the traditional sense, which means responsibility of the state to live up to its treaty commitments, and any damages sought have to find their base on the traditional basis of damages in international law, which would require that the nationals of a particular state be involved. It was just to be made abundantly clear that that is what was involved. There had been some discussion in the Sixth Committee which cast some doubt on it, and although the language, to my mind, is clear, it was felt it was necessary to make our position abundantly clear.

Senator McMAHON. Thank you very much. We shall next hear from Judge Gunther.

STATEMENT OF HON. JUDGE GUNTHER, APPELLATE COURT OF PITTSBURGH, AMERICAN COMMITTEE FOR THE INVESTIGATION OF THE KATYN MASSACRE, INC.

Judge GUNTHER. I am appearing on behalf of the American Committee for the Investigation of the Katyn Massacre, Inc., of which I am a member. This committee was created on November 21, 1949, in order to investigate the case of mass murder of Polish officers.

Among the officers and members of this committee are Arthur Bliss Lane, president, Max Eastman, Dorothy Thompson, vice presidents, Gen. William J. Donovan, Clare Luce Booth, Allen W. Dulles, James Farley, Constantine Brown, George E. Sokolsky, George Creel, Charles Rozmarek, and Julius Epstein.

I am also chairman of the political committee of the Polish-American Congress which represents more than 6,000,000 American citizens of Polish extraction and supreme head of the National Polish Alliance. I appear today before this committee for two reasons: First, to urge upon you the prompt ratification of the genocide convention as a great humanitarian measure and secondly, I intend to bring to your attention that genocide did not stop with Hitler and that many peoples of the world, and especially my Polish brethren, need very badly this convention in order to be protected against national extinction behind the iron curtain.

Poland suffered over a decade from two invaders who proved to specialize in genocide on a most gigantic and unheard of scale. I would like to read in this connection a letter addressed by Mr. Charles Rozmarek, president of the Polish-American Congress, to you. It says [reading]:

LETTER FROM PRESIDENT ROZMAREK

NAZI AND SOVIET MASSACRES OF POLES

MY DEAR SENATOR: The Polish-American Congress in the United States, representing more than 6,000,000 American citizens of Polish extraction, is deeply interested in and urges the ratification of the Genocide Convention which is now under consideration by your subcommittee.

The crime of genocide, which is defined in the Convention as the intentional destruction of national, religious, racial, and ethnic groups, has affected, and still affects, very strongly the fate of the Polish nation in Europe under the brunt of the two invaders: Nazi Germany and Soviet Russia. Millions of Polish citizens have been slaughtered by the two invaders, either directly or by their having been submitted to slow death in concentration and slave labor camps in Germany or in Siberia. Families have been separated for the purpose of stopping procreation and interrupting the continuity of the Polish nation. Polish women have been subjected to sterilizations, compulsory abortions, mutilations, for the purpose of medical experimentations or in a beastly game of wanton brutality. Polish intellectuals, teachers, writers, artists, and religious leaders have been removed by violence and destroyed in order to deprive the nation of the benefit of national and religious guidance. By those acts the invaders hoped, and still hope, to deprive the nation of the forces of cohesion so that the nation as such might be more easily destroyed.

In all of these acts both invaders have shown, and are still showing, the intent to destroy the nation in whole or in part, as a nation, as defined in the preamble of article 2 of the Convention.

Poland was one of the first nations in central Europe to embrace Christianity and to develop the concept of western civilization. The destruction of the Polish nation means also the obliteration of its culture and religious life, which have contributed greatly to modern civilization. Millions of Poles throughout the world are still mourning the losses of those who were victims of Nazi genocide in Auschwitz and of Soviet genocide in Katyn.

AUSCHWITZ

Senator MCMAHON. Where was the Nazi massacre?

Judge GUNTHER. The Nazi massacre was at Auschwitz. [Continues reading:]

Being aware of the fact that the crime of genocide is practiced against the Polish nation, the Polish-American Congress took early action in drawing the attention of the world to this crime and has been supporting constantly the Genocide Convention in resolutions, and so on.

The Senate of the United States should act decisively and promptly on a crime like genocides, which is a blot on our civilization. The ratification of the Genocide Convention will provide a useful instrument for the preservation of standards of decency in the community of nations.

I feel that many of these murders at Katyn—they found about 4,000 of these officers, with their hands tied behind their backs, and were shot in the back of their head and buried in a common grave. About 11,000 of them we know nothing about. Mr. Stalin, Mr. Vishinsky, and Mr. Molotov have been asked about them time and time again. They said, "We know nothing about it. Ask the Germans."

You will notice from this letter that Mr. Rozmarek speaks about both Nazi genocide and Soviet genocide. There is a common pattern in both of them. The Soviet pattern of genocide is first to destroy the elite of a nation, later on to destroy as much as possible the sub-

stance and to enslave the remainder. The Polish officers in Katyn, most of them being intellectuals, teachers, university professors, artists, doctors, engineers, architects, librarians, writers, newspaper men, civic leaders—were butchered in cold blood.

After about a year or so of postponing and evading the question as to where these intellectual artists and doctors and lawyers and officers were, they finally said, "We think it was the Germans who murdered them."

RUSSIANS RESPONSIBLE FOR KATYN FOREST MASSACRES

Now I think we will bring before the conscience of the world proper evidence to prove that the Russians, after they captured these army officers in 1939 took them to the prison camps in Russia and later took them out of these prison camps and murdered most of them. That is the reason we think the Polish-American Congress and the Polish National Alliance and the people whom we represent feel that the Senate ought to ratify this Convention.

Senator McMahon. Of course, the maintenance of the slave labor camps in any country, if it wasn't done for the purpose of destroying that particular race, would not come within the four corners of this Convention. You know that.

Judge Gunther. At this time, we are mostly concerned with the Katyn murders of these intellectuals, because we believe that once you destroy the leaders who give guidance to the rest of the people, you are practically destroying the nation in itself.

Senator McMahon. Thank you very much.

STATEMENT OF DR. ABRAHAM SHUSTERMAN, THE SYNAGOGUE COUNCIL OF AMERICA

Dr. Shusterman. Gentlemen, as the officially designated spokesman for the Synagogue Council of America, which comprises the combined forces of religious Jewry in this land, representing 4,700 synagogues, I regard it as a sacred privilege to urge, in the name of the entire reform, conservative, and orthodox rabbinate and laity, the approval by this subcommittee, the subsequent approval by the Foreign Relations Committee and the adoption by the Senate of the Convention on the prevention and punishment of the crime of genocide, as adopted by the General Assembly of the United Nations.

Our advocacy of this convention is implicit in the entire religious tradition of our people. The Decalogue, the basic law of the Synagogue and of humanity as a whole, contains the divine command, "Thou shalt not kill." Surely this is as applicable to genocide as to the murder of a single individual. Regardless of the race, color, creed, or national background of the victim or the evildoer, my people always has regarded with reverent approval the rabbinical dictum, "He who destroys even a single life is like one who destroys the whole world." How much the more should the destroyer of a whole people be regarded as the destroyer of the entire universe.

SIX MILLION JEWISH VICTIMS

Long before Israel became the victim of mass murder, he knew how completely even the advocacy of it violates the divine principle of the sacredness of human life. Today, 6,000,000 of my brethren, the Jewish martyrs of our generation, speak through me. These voices, rising from mass graves, blend with mine in this plea in behalf of our fellow Jews but also in behalf of all people of every color, creed, and clime. In one accord, we ask that the United States of America join with other nations in declaring that it is a crime, punishable under the law, to destroy in whole or in part a national, ethnical, racial, or religious group—yes, that it is a crime, calling for punishment to conspire with others or to incite others to commit genocide. Once and for all, conspiracy toward these ends should be branded as criminal in the eyes of decent men and nations, even as it is sinful in the sight of God.

Senator McMAHON. Thank you very much.

STATEMENT OF REV. CONRAD KLEMMER, PASTOR, ESTONIAN EVANGELICAL LUTHERAN ST. MATTHEWS CHURCH

Reverend KLEMMER. As an American citizen of Estonian descent, doing missionary work among Estonians, I come in contact with Estonians. I know their plight.

SOVIET RUSSIAN INCORPORATION OF ESTONIA INTO U. S. S. R.

Russia has incorporated Estonia by trickery and by power and it is part of Soviet Russia now. The first thing that the Russians did was to arrest, deport, and kill the leaders of the nation. That means also the national leaders, religious leaders, professional men, businessmen, and everyone who was suspected of not being in conformity with communistic ideology.

SOVIET GENOCIDAL PRACTICES ON ESTONIANS

From April to June 1941 they had arrested and deported 70,000 Estonians. Of that number, 18,000 were killed right away. Over 7,000 were sentenced from 10 to 25 years in prison, and the rest were sent in a most cruel way to the labor camps. Men were separated from their wives and from their children, and they were deported in freight cars, without any food, water, or convenient facilities. If anybody died, they had to stay with the living, because the car doors were locked, and the same thing happened with the women and young ladies, many of whom had high university educations, and they sent the women to north Siberia, Kamchatka, Sakalin, which was the place where the Czar sent the murderers there during his time. The women had to work in peet bogs, stone quarries, and do the most primitive farm work on the Russian farms and also cut the timber in the woods.

PRACTICES VERSUS BALTIC PEOPLES

By 1946, Russia had sent to the northern section of Siberia 100,000 Lithuanians, 60,000 Latvians, and 50,000 Estonians. They had to live part-time in the ground, and in the first year, 25 to 35 percent died.

This shows that Russia is practicing the most cruel way of genocide. Now in 1949, last year, in the spring, Russia has again practiced deportations in a most horrible way. At this time, Russia deported farmers, because Moscow has decided to collectivize Estonia, Latvia, and Lithuania by the spring of 1950. My own three nephews and their families were destroyed or liquidated because one happened to be a preacher, one an army captain, and one a businessman.

I have come in contact with the people who have seen the terrible ordeal. When the Russians arrested Estonians, they locked them in freight cars and left them on the tracks for several days without any drink, food, or any other facilities. I have some certified copies of the people who have signed affidavits, and I would like to present these copies, with your permission. This clearly shows that Russia, or the Soviet Union, is practicing genocide among the Estonians and trying to destroy them. Some girl among the displaced persons in Germany tried to persuade Estonians to go back to their homeland. She had luck with only 100 people from the western zone, and those did not reach Estonia but were sent to Siberia.

Senator McMahon. Sent to Siberia?

Reverend Klemmer. Siberia; yes.

Now you gentleman condemn this terrible crime, and I am glad that God has given you wisdom enough to condemn it, and I hope that this international crime of genocide will no longer be tolerated by the civilized nations.

Senator McMahon. Thank you, sir. Reverend Klemmer's affidavits will be included in the record at this point.

(The matter referred to is as follow:)

GENOCIDE IN ESTONIA

As stated by an official Soviet publication, The Brain of the Army, by B. Shaposhnikov (published in 1927–29), one of the premises of the Soviet policy is that the Soviet system is compulsory for all lands in the Soviet Union and that the "capitalist environment" is to be destroyed by every means. One of the means is the liquidation of opposition parties, as well as of national and religious groups. And this has been ruthlessly applied in Estonia, which free country has been forcibly incorporated into the Soviet Union in 1940.

According to the Estonian Red Cross statistics, in 2½ months (April–June 1941) 60,911 people of all classes—40,737 from the towns and 20,174 from the country—were deported to Russia; 7,139 had first been sentenced to 10 to 25 years hard labor; 1,800 Estonians were killed; 32,187 men were nominally mobilized into the Red Army but witnesses of some mobilized men who managed to escape abroad show that most of them became inmates of the Russian slave-labor camps in Arctic Russia, Siberia, Kamtchatka, Sakhalin, and elsewhere. A horrible deportation center of Vorkuta, amidst the polar tundra of northern Russia, held in October 1946 100,000 Lithuanians, 60,000 Latvians, and 50,000 Estonians. Men were invariably separated from their wives. Mothers were mostly separated from children who were put in labor or training camps for young Communists (komsomols). Of them almost nothing had been heard since. The people, often in summer clothes, were pushed into freight cars which were sealed and sent on their way without food, water, or medical assistance. Pregnant women bore children under such conditions. The corpses of people who died on the way were left with those who were alive. * * * The mass deportation of last spring was the most brutal hitherto and affected mainly the farming population; Moscow had decreed that by the spring of 1950 the Baltic area must be collectivized and individual holdings be liquidated.

On January 1, 1939, the Republic of Estonia had 1,134,000 inhabitants, of them 88.2 percent genuine Estonians. Under the first Russian occupation the population decreased by 6.7 percent. Of them 1.2 percent were Estonian citizens of German origin who moved to Germany at the call of Nazi government, and the

rest were victims of the Soviet terror. Yet, according to a declaration made in the Estonian DP camps by Colonel Bulinsh, a Russian repatriation officer, Estonia had a total of 2,500,000 inhabitants in December 1947. The explanation of this sudden increase of population is that multitudes of Russians had been brought to Estonia and other Baltic countries, while the native population had been shifted to remote places in the Soviet Union. A great many Russions have been settled in Estonia as peasants, and even the names of the expelled farmers have been given to them.

In spite of an insidious repatriation propaganda, which has been made in DP camps by the Soviet agents and favored by UNRRA and IRO officers, only a hundred or so Estonians have so far declared their willingness to return to Estonia from the western zones. On the other hand, in the Russian zone all the Estonians who have fled from their country for fear of the Russians were given orders to travel to Siberia where they had to report to the local MVD (security police). It is highly questionable whether the majority of the citizens of the Baltic countries who have expressed the wish to return will ever see their homeland again.

Of the deportees to Russia only a very few have returned to Estonia. All the other deported men, who were separated from their families in Estonia and packed into cattle-trucks, have since disappeared and neither their wives in Russia nor their relatives in Estonia have received any communication from them. The deported women were taken some to the Kirov district in Russia and others to the Novosibirsk district in Siberia. There they have been set to work on collective farms, in peat bogs, stone quarries, and at wood cutting.

The men transported to Russia under the pretext of mobilization in July and August 1941 were during the winter of 1941–42 sent to work in camps situated in the area of the town of Kotlas, high up in the Arctic Russia. The majority of them died as a result of malnutrition and inhumanly hard working conditions, which are illustrated by a statement made by Rev. Julius Juhkental at the London legation of the Republic of Estonia on July 7, 1948, and signed by his own hand. Reverend Juhkental, a Lutheran pastor, is one of the five Estonians who had been sent to Kotlas and escaped from a slave-labor camp. They arrived in India in May 1944 after having covered a distance of about 2,000 miles from Slatoust to Afghanistan.

In February 1949 the Estonian National Council in Sweden submitted to the Commission of Inquiry Into Forced Labor of the Workers Defense League a list containing the names and biographical data of 59,000 Estonians murdered, imprisoned, deported, or forcibly conscripted by the Soviets in 1940–41. This list, as well as other materials and individual statements, have been carefully controlled. All these documents point at the fact that the Soviet authorities are killing and deliberately inflicting on the Estonians conditions of life calculated to bring about the physical destruction of the nation in whole or in part; that by separating wives from their husbands they impose conditions intended to prevent births within a large group of Estonians; and that they forcibly transfer Estonian children—all acts that mean genocide as stated in article II of the United Nations Convention outlawing genocide.

The ratification by the United States of the Convention signed by 39 nations would speed the ratification by other signatories and thus give the Estonians and other oppressed peoples at least a hope that genocide as an international crime will be no longer tolerated by the community of civilized nations.

My Experiences in the Forced Labour Camps in the U. S. S. R.

(Written and signed by Rev. Julius Juhkental to be kept in the records of the World Council of Churches)

It was in the summer of 1914. Estonia had been invaded by the Soviet Army in 1939 and thereafter forcibly and illegally occupied in 1940. Thus by that time Estonia had already suffered enormously and to such an extent that her existence as an Independent Republic had come to end. But the series of bitter blows never ended. They became more intensive only and followed one after another in a rapid succession. The air was full of tension even for the Russians as the rapidly changing in the world predicted something bad also for the Soviet Union. Those ominous facts drove the Russians to even quicker action. The night of June the 13th, 1941, saw one of the cruellest acts committed by the com-

munists when tens of thousands of innocent people were arrested and immediately deported. But when the Germans attacked the Soviet Union on the 22nd of June, 1941, then it was obvious to the Russians that soon their days in Estonia will be numbered and they must do all they could to take out of Estonia the most dangerous element—her manpower. They, therefore, began with mobilisation at one.

At that time I was working at the St. Charles Church (Kaarli kirik) in Tallinn as pastor. Since June the 13th the number of us pastors had diminished considerably. Fortunately enough only a few of us had been arrested and deported from Tallinn (Prof. H. B. Rahamägi, Dean H. Kubu and Pastor K. Tiit) but the majority of us went underground as the arrests went on unceasingly and it is quite natural that everyone was afraid of being perhaps the next victim. Those were really days of horror one and hardly imagine. I, however, noticed at every step how great was the anxiety and how all the people were yearning for spiritual help and encouragement. It's why I could not get rid of that feeling that people needed me most urgently. It was also the only reason that prevented me from going underground. The nights I spent with my relatives moving constantly from one place to another and went on working during the day.

On the 25th of July, 1941, the Soviet authorities declared mobilization for all the men up to the age of 37 to take place on the 27th July. I was among those who had to join up. All my efforts to find some reason for how to avoid that mobilization failed. Perhaps it would have been possible to find a hiding place for myself but for the threat that the families and relatives of all those who would try to defy those orders or avoid mobilization will be arrested and deported. So I had to join up with others who were in a similar situation. We had to leave for Russia not knowing that it would mean leaving behind our home country perhaps for good. I also could not even guess that I would not see my family again for more than 5 years.

We had been ordered to take along food for 5 days and our strongest footwear. No order was given as to clothing. Everything was arranged in a hurry and I left home on Sunday the 27th of July, 1941. The first night we had to spend outside in a courtyard of a school in Tallinn because the house was already packed with others before our arrival. At about 4 a. m. next morning we were taken to the stadium in Tallinn where there were many others, I should say thousands of others, from different other mobilization centres waiting for us. There we spent the whole day. It was kept secret where we shall have to go and whether we will be sent away by train or by sea. In the afternoon we were ordered to get ready for moving on. Our way led us to a station just outside Tallinn where a long train consisting of cattle trucks was ready waiting for our arrival. In the trucks there were only plain planks for sitting and nothing else. As each of those trucks was meant for more than 75 men there was no possibility whatsoever of even dreaming of sleeping. Approximately 3,000 young men were taken to Russia at that time. It was one of the most moving scenes I have ever seen and at the same time a desperate one too when the train started to move. Wives, children, fathers, mothers and sisters quietly sobbing but those was leaving pretended to face the situation calmly. And yet deep down in their hearts they were feeling most heart-broken. It was, however, quite natural because the train was to take them into an unknown and dismal future. All were uncertain whether they were taken to the front, for military training or for some other special but mysterious purpose.

Early on the morning of July 29th we crossed the Estonian-Russian frontier. So we were out of Estonia and many of them who were in the train did not realize that they were never to see it again. It was their last journey leading to destruction and death. Before crossing the border many of us tried to escape from the moving train to join Estonian guerillas hiding and fighting in the forests. But there were few who attempted it and even less who succeeded in getting away because on both sides of the railway armed guards were patrolling the line and whoever was caught was shot on the spot. I had no intention of leaving the train for fear for my family.

Our journey up to Leningrad was extremely dangerous. The front was quite near at many places so that the boom of raging battles was clearly audible. Air raids on the trains and railway stations were frequent. It was strange to see ordinary Soviet citizens looking undernourished, ill, and exhausted. In the same way they were surprised to see us because to them we looked like giants. They would not believe that we were Estonians as they had been told that in a capitalist country like Estonia people had been hungry and starving.

We passed Leningrad and then the train turned to the east. All we saw on our way was appalling. The stations were full of trains packed with those arrested and deported. They often had been standing there for weeks without any food and water, locked in the trucks. The heat was extraordinary which increased their plight. Next to those trains were others full of wounded soldiers, new troops for the front, ammunition and all kinds of war materials. Compared with the situation of those who had been arrested and deported ours was considerably better. The hope of our ultimate return to own country was the main factor which encouraged us and kept us going. It was distressing to see those poor creatures who were completely at the mercy of the Russians and yet we were absolutely unable to help them in any way. We were not hungry because we had our own food taken along from home, but they were. We were allowed to get water for drinking, but they were not. Of course, the Soviet authorities did not care for us either. It was almost entirely our own job to look after ourselves. During our whole journey, lasting exactly a week, to an unknown destination we got 2 or 3 meals, 2 kg of dry bread and 2 eggs. The food we got was of bad quality but we discovered later that it was best we ever got in Russia. The officers in charge of us belonged to the Estonian Army but they were under the control of the officers of the MVD. We passed through Vologda, Kirov, and then our way turned to the north. We were shocked to see that on both sides of the railway there were barbed wire fences. We did not know what to think of it. Soon we were told that those were labour camps where there were working political prisoners and politically suspected persons. The real Soviet Union began to take shape in our minds.

We arrived in Kotlas on the 5th of August 1941, after having been on our way exactly one week. We were tired and exhausted and expected very much to get some rest but this hope was in vain. We were accommodated in different schools where we had to lie down on the most filthy floors. No arrangement for food and sleeping had been made. Next morning they began to make lists of those who had arrived. It was obvious that all the lists which had been made of us at the mobilization centers and our documents had been left behind. It was still uncertain what they were going to do with us. We had to go on living on our own food. There were already many whose food was nearly finished. To buy food from the town was impossible or if it was possible then it happened only occasionally. Perhaps it was due to the general complaints we all made or was it officially arranged but on the third day we were taken to a public dining room. It was something like a filthy stable or a pigsty where we got some bread and one plate of soup of rotten fish. It was all for the whole day. It did not taste of anything but it was only the beginning of real troubles lying ahead.

We were divided into several groups and had to begin with military training. Yet it was obvious that it was not the real object we were taken to Russia for. A few days later we were divided again but this time into 4 companies of which 2 were sent down the river Northern Dvina on the banks of which Kotlas lies. Their destination was again kept secret and therefore unknown to as well as to us. In a few days' time our military training was brought to an end too and we were sent to work. On one side of the town there was a small airfield and their intention was to enlarge it. Our job was to cut down the trees and bushes growing on the sides, to level and drain the ground which was awfully marshy and soft. We had to work there the whole day long 7 days a week irrespective of weather, food, etc. We were soon removed from the town to live in a old collective farm on the other side of the river. It was horribly long trek partly by barges to our working place every morning and in the same way back in the evening. We were sent to work at 7 o'clock in the morning and returned at 7 o'clock in the evening. As our food we got 800 gr. of bread, 2 plates of soup and some porridge per day. The time we spend on the barges was used for political instruction and propaganda for the Soviet Union. We were under rigid control of the MVD both while working or at home. On the same airfield there were working also political prisoners with whom it was strictly prohibited to speak or associate in any way. Despite the restrictions I became acquainted with an ex-professor of history at the Moscow University who at that time had been imprisoned for more than 12 years. He told me that also his wife, a doctor by profession, 2 daughters and a son had been arrested shortly after his arrest but that was the last he heard of them. I seemed that almost all of those prisoners were highly educated and had been imprisoned solely for political reasons. Unfortunately I could not have longer talks with them but it was interesting to see how glad they were whenever they had got news about the German advance. It was manifest and their conviction that they saw their release only in Germany's

success and victory. Everyone of them had plans for escape ready in case an opportunity might become available. It was really astonishing to see their gleaming faces one morning but I did not know the actual reason. Then the professor whispered to me that 3 of their fellow prisoners had escaped in the night. This professor was also the first to tell me that the Soviet Union is but a huge prison with the sky as its ceiling. According to my later experiences it proved to be absolutely true. It is not that only those in jails, whose number was calculated to amount up to 15 million or more at that time, are prisoners. Every citizen of the Soviet Union is in a way a prisoner. It is impossible to speak of freedom if one has none of the freedoms expressed in the Atlantic Charter. A Soviet citizen is not supposed or allowed to read foreign newspapers or anything published outside the Soviet Union. Literature not in accordance with the doctrines of Communism is prohibited. Can we call it freedom? A Soviet citizen is not allowed to listen to any foreign news because nobody can possess a wireless set without a special permit issued by the Soviet authorities. All one can do is to listen to the loudspeakers set up either in his private rooms or in any of the public parks and which relay programmes broadcast by the Government controlled broadcasting centres. Is it freedom? Can one speak of freedom from fear if husbands cannot trust their own wives and vice versa? (It was my personal experience that a man did not dare to say anything to me until his wife had left the room. Then afterwards he confessed that he is afraid of his wife and recommended to me that it would be always better not to trust even the nearest persons one has.)

Our living conditions in that collective farm were appalling. We had about 20 men in a room of about 35–40 sq. metres. We slept in bunks built round the walls in two tiers and were full of bugs, fleas, and cockroaches. Only lice were missing but we did not know that soon also they will be our companions. There was no arrangement for washing and we could use a canal which was near by. We had there a room which was supposed to be a Russian bath but it was mostly cold and without water. Our personal things were checked continuously. Any literature and books we had brought along were confiscated. It is why I had to hide my New Testament most carefully either in wall cracks or between roof beams. Once a rumor was spread that all valuables like rings, watches, etc., would be confiscated. As a result of it I hid my wedding ring in a cake of soap and kept it there until we left that place. I must add that fortunately that rumoured order was not carried out. Worst of all was the mental strain we were living under. It was clear that we were suspected and taken to Russia for our disloyalty to the communist regime. We were threatened that we never would see our home country again. Everyone who could not keep his thoughts to himself disappeared for ever. Some of us attempted to escape but very few of them were successful in getting away. The country was wet, marshy and like a net of rivers and their tributaries that such plans were mostly given up.

Our clothing was extremely poor. A few of us were lucky and got some cotton shirts. A few old Estonian Army uniforms were distributed among us. As to the footwear the situation was even more desperate. The majority of us like myself had only a pair of light shoes. The aerodrome where we were working was very often like a lake and there we had to wade one day after another. Consequently our feet were always soaking wet. We had no place to dry the shoes during the night. Next morning it was quite a job to get on wet shoes again.

Thus we worked there for about 3 weeks. All of a sudden this work was stopped although the aerodrome was far from being ready. We were told that that place was considered not suitable for an aerodrome. Anyhow, that was given as a reason for such a sudden and unexpected stoppage. We were then sent to work on a field on the other side of the river, a place which was about 3 km. from our camp. That place was full of stones which we had to remove. There too we had to work with the greatest speed for about 3 weeks. Our astonishment was really great when that work too was stopped again before the areodrome was completed.

We were ordered to get everything ready for moving on. This done we were waiting for a ship that was supposed to come for our transport any day. Fortunately we were not aware of that extreme suffering which was waiting for us ahead. I cannot help wondering what an excellent arrangement of God it is that one does not know what the future holds for him. If he would know it he would become desperate, hopeless and helpless. As the ship did not turn up for nearly a fortnight we took to for granted that the coming journey must be a long one. Eventually the ship appeared but to our great surprise we had to embark in order to be taken only to the other side of the river, i. e.

we had covered a distance of ½ km. It is really funny that for such a short trip we had to wait there so long. From there, then, we were taken on foot to a village at a distance of about 10 km. There we were supposed to have our lunch. In this respect no arrangement had been made. So everyone of us had to find a place where to rest and get something to eat. It was a difficult job, especially to find food because even the local villagers had nothing for themselves. If it was at all possible to get something then it was only a few potatoes and nothing else.

At about 3 p. m. we started off again and again on foot. We had to carry our own things. After every 50 minutes' walk we were given a rest for 10 minutes. This march lasted till midnight after we had covered a distance of about 50 km. We were promised that in the village we arrived in everything would be arranged for rest and meals but eventually it proved to be just the opposite. A MDV officer in charge of us was scarcely able to get a room for himself. Finally he managed to get for us 3 tiny rooms where we had to rest. One can imagine what kind of a rest it was if 3 tiny rooms had to accommodate about 250 men. We had scarcely room enough to sit. What then to speak of sleeping. But to sleep we must. All of us had sore and stiff legs and feet full of blisters.

At 8 o'clock in the morning we had to start off again. Many of us were on the verge of collapse but we were forced to go on. In spite of threats, blows and kicks a few of our number remained behind because of mental and physical breakdown. Nobody cared for them. What happened to them I don't know as we never heard of nor saw them again. In those conditions we had to travel for more than 3 days and I should think we covered a distance altogether about 150 to 200 km.

Finally we arrived in a remote lumber camp in the north. First of all we saw there a few rows of plain wooden crosses. We were told that these belonged to the Poles who had died while working there. It was late in the autumn and as on the last lap of our journey we had to move along a fire lane we were scarcely able to move on at all. The ground was so soft that it was almost impassable. Then in a wet and muddy hollow we saw a small group of huts. Two of them were to accommodate our group of 250 men. The first day we spent in making bunks and settling down. Next day the work began. As I have said before we had no proper footwear. Only those who had nothing to put on were given flimsy sandals made of bark. They were not waterproof at all although we had to wade in water the whole day long. For food we got 800 grams of bread and 2 plates of soup per day—one in the morning and the other in the evening. One can be sure it was most insufficient for such a hard work we had to do there. I must add that the supposed to be soup was only two plates of boiled water. Our work was to fell trees, the hardest toil the majority of us had ever done under such poor conditions and under such an enormous pressure. As to sanitary arrangements and hygiene none whatsoever were made. No doctor was on the spot, only a female nurse who seemed to have no medical training. Medicines were missing. Even that a poor arrangement that had been made was a matter of form as they had no intention and no interest in looking after our health and well-being. Their only interest was to get out of us the greatest possible amount of work. There was an incredibly high fixed standard of work for each of us to be done daily and if one failed to do it his food was cut accordingly. It was clear that in the long run we could not possibly put up with those inhuman conditions. Our health deteriorated day by day. Bodily strength and in connection with that our spiritual strength and willpower diminished to such an extent that in about 2 months' time we were looking like human wrecks and skeletons. Even those who had been doing physical work throughout their whole life could not stand it. As already said in 2 months' time were were so exhausted and our health was so much undermined with insufficient food of the worst quality and unbelievably high pressure of work that death began his work. It was quite common that every day 4–6 of us died. The main diseases which ended with death were pneumonia and dysentery. We had to work 12 hours per day—from 6 o'clock in the morning until 6 o'clock in the evening. That winter was extraordinarily cold. It was not exceptional and happened often that the temperature was —50° C. There was an order that if the temperature was —30° C. there was no working in the forest, but that order, however, was not applicable to us.

Apart from that discouraging and oppresive feeling of physical strain constantly with us there was something even worse which created a gloomy and dismal prospect as to our future. It was the mental and spiritual oppression

which caused anxiety and made us worry and feel unsafe and uncertain day and night. It was a horrifying trial in what way they wanted to find out our political mentality and reeducate us to become loyal Soviet subjects. One political meeting followed another, ordinarily called at nights, at which we were threatened to be shot if the output of our work would not reach the target expected from us, or not to be allowed to return home if we would not change our political views regarding the Soviet Union and Communism. We were compelled to do our utmost in helping them to conquer and crash Germany. Besides those regular meetings they went on with individual interviews and interrogations. They suspected me especially and solely for that reason that they knew I was a pastor. Several of my fellow workers were questioned about me. Their aim was to find out as to my views regarding politics and my attitude towards Communism. After those interrogations the persons questioned had been coerced to sign a paper to keep everything secret and especially not to inform me about it. If they had acted contrary to that signed pledge the result would have been their death by shooting. Yet they came and told me everything in spite of running the risk of being shot.

It is really difficult for me to describe the most pitiable sights I saw there how every morning persons who were seriously ill were forced to go to work being beaten and otherwise ill treated, how a row of tired and exhausted creatures was stumbling to their working places, how coming back from their work in the evening many of them fainted and collapsed on their way. I noticed at every step how much everyone of us was longing for spiritual help and strength. I saw the first time in my life and realized it in a peculiar way how much a human being is dependent on God. And there now they all were gravely in need of help from God. It happened often that they came to me and started to speak of God, of religion and of Church,—even those who never in their life had been thinking of those things. Now God became alive for them who never had cared for Him or His Church and faith. Of course, I tried to help them all in whatever way it was but possible although with it I put myself into great danger. I never can and will forget that most impressive experience I have ever had in my life when in the morning of the 31st of October, on the Day of Reformation, I heard a group of them singing in the quietness of the forest a well-known hymn of thanksgiving and praise to God. I knew and understood well that it was a spontaneous outburst of their feelings and emotions burning in their hearts at that very moment in those extremely difficult days. And when our group of five arrived at our working place we had our morning prayer that we used to have regularly every morning,—on that day we felt even more than usually encouraged and strengthened for all the days to come.

I have mentioned already that our food was extremely poor and insufficient. With us there were working also some farmers from the neighboring collective farms. It was that we bartered with them giving them whatever we had, especially of clothing, getting from them in exchange some food or tobacco. But as we had almost nothing to give them many of us began to steal from them. Oats, which they had put into the stables for their horses, were stolen and made into a kind of soup. Potato pealings, they had thrown out and were frozen in snow, were picked up most carefully and eaten. Carcasses of horses, which had died from overwork, were cut into and used as food.

We could not even think of running away because the place was remote and inaccessible. We all, without any exception, and our bunks were full of all possible kinds of insects including also lice. Not one of us could claim to be free from lice because washing arrangements did not exist at all.

It happened in February 1942, that quite unexpectedly we were asked who from us would be willing and prepared to go to the front. We found it an excellent opportunity and therefore we all grasped at it. For us it seemed to be the only possible moment and means to escape from that hell and eventual death staring already then into our face. There were about 200 of us left at that time. It seemed that they had not expected that willingness from us. So many had applied for going to the front that they had to start to sift us as to our political views. Only about 20 from among us were accepted at that time. The others had to continue working. The death rate was increasing continuously. In March about 50 more were sent away and so about 75 of us including myself had to stay behind to wait their death there. About 15 of us were well enough to work, all the others were either disabled or in some way unfit for work. I was considered to be one able to work although I had stomach trouble which was undoubtedly a very bad sign. I consulted the nurse but in vain. She said I was pretending only and she therefore refused to permit me to stay home. It is really a miracle that I at all recovered and survived.

Then a new order came through in April that all of us must be sent away. Even those who were ill tried to come along because they were afraid that if once left there they will be left there for ever. Thus only those with the most serious cases remained and they were told that transport arrangements would be made for them. Whether it was true or not I cannot tell as I never saw them again. Our way back to Kotlas was again on foot just as we had come. But now it lasted over a week, a clear sign that we could not move so fast any more for weakness. From Kotlas we continued our journey in cattle trucks but the destination was again kept secret as usual.

We passed Kirow, Perm, Sverdlovsk, Chelyabinsk and arrived in Chebarkul where we were told an Estonian Division would be on military training. Perhaps it gives an idea of how long we had been on our way if I say that we left the forest in the middle of April but arrived in the camp of the Estonian Division in the beginning of June. During that time we were ourselves responsible for our food because officially we were fed only twice. On the way we realized all we had but it is quite understandable that mostly we lived on thefts. On our arrival we were like monsters dressed in remarkably shabby clothes and our feet wrapped in rags. I was really ashamed of myself so that I did not like to show myself to my friends I met there.

There were met also them who had been sent away from the forest before us. We also learned that it had been the Kremlin's order to collect all the Estonians scattered all over Russia in two centres, i. e., in Chebarkul and in Kamoshlov further north. At those places two Estonian Divisions had to be formed. In Chebarkul there were approximately 20,000 Estonian men. It happened the first time since our arrival in Russia that we were given proper clothes to put on, namely Soviet Army uniforms. The food we got there was comparatively good but it could not make up the deficiency. We lived in huts built partly underground. The military drill was heavy but much heavier was the political purge which went on vigorously all the time. The death rate was high in spite of the better conditions we really enjoyed there. The mental strain remained and every day many from amongst us disappeared into underground dungeons to disappear from there forever. They did not trust us and I must say they did well. Because of that distrust they gave us only wooden rifles for training. There was no doubt that they were preparing us for the front at full speed.

Because of the political purge and espionage everyone of us tried to keep his mouth shut. We all hoped that once on front there might open up a possibility of escape. It was the same with me that I tried to be most cautious and careful in all the expressions. But I am sorry to say that it did not help very much. I was still suspected and I could not get out of that state. I was questioned again and again. Once it was decided that a court made up of three of our own men must be set up. I was put up as a candidate for that office because my companions respected me and wanted to see me in this office. But alas, at a public meeting all the three candidates had to tell their life story. After I had finished mine I was questioned by the officers of the MDV who were present at that meeting. This questioning did not happen to the others. One of the questions was whether I would take up pastoral work again after having returned to Estonia at the end of the war although I ought to know, as they put it, that all the pastors were liars and religion was only poison to the people. Their aim was clear to me. I was put before a dilemma. I was sure that if I gave an answer according to my convictions I should be lost. Such an answer they all expected. So I tried to evade the question by replying that I would not take up that work if I could find anything else. But when I left the meeting I had tears in my eyes because I was feeling just like St. Peter who had denied Christ and His Church.

All my efforts to please the communists had been in vain and futile. A few days after that nerveracking meeting I was told not to join others in their training. Later I gathered that there were about 200 like me who had been ordered to stay home. Our army uniforms were taken away and replaced by rags to be put on. Special identity cards were issued to us from the Headquarters and we were taken to the station. It happened in the beginning of July, 1942. I had thus been able to be in the Division for a little less than a month. Our destination was again kept secret which made us nervous and had a very bad psychological effect on us. We were ordered off the train at Urshumka, a place not far from Slatoust—a well known small town. That meant that we were again in a forced labour camp and in exactly the same position as in the forest. A new period of slavery began. The huts we had to

live in, were built partly underground and were in a most horrible condition. The roofs were leaking, the bunks were full of bugs and lice and as a whole unimaginably filthy and crammed with men. The food was like that in the forestry with that exception that now we got only 700 grams of bread per day. During the war an ammunition factory had been evacuated there and our job was to build houses for the staff and workers of that factory. The work was as hard as one can imagine. We were hungry which compelled us to steal either from the field roundabout or to kill dogs for additional food. The winter was approaching rapidly and it was inevitable that if we remain there we would not be able to see next spring any more. It occurred every day that some of us ran away. We were threatened and told that all of them had been captured and shot. It, however, could not stop the flow of escapes.

We got together a group of five. As we all were suspects we began to make plans for escape. It was our determined decision that whatever the outcome of our attempt may be we must take the risk because we thought it would not matter very much where one has to die In taking the other course there was always a chance of being successful in getting away. I had bought in Kotlas an elementary geography book containing also a poor map of Russia. I had kept that map very carefully and now it proved us very useful. We were extremely lucky to have it because to get one then would have been absolutely impossible. It was strictly prohibited by the Government to sell or possess any maps. We forged the documents we had and made some new ones. Whatever we had left we sold and tried to buy food for the journey. It is funny that how little one may have things in need he still can find something for selling and realizing. It was on the 25th of September, 1942, after we had finished all necessary preparations that we left our room, or more correctly stealthily crept out one by one late in the evening and met later at a certain place to continue our journey together. By profession we belonged to different occupations—one farmer, one accountant, one bricklayer, one house agent and myself as a pastor but now we acted and thought like one. We came to the station where a train for Chelyabinsk was just in. We rushed in without any delay. Our object was to get to Tashkent. From there we planned to go either to Turkey, Iran or Afghanistan. It would be an awfully long story if I would go into details. Suffice it to say that that we were able to travel at all was partly due to the general chaos prevailing in the whole of Russia in those days and partly to that factor that two of us, i. e. one of my companions and myself were able to speak Russian fluently. We were outlaws in the real sense of that word but it was our main duty not to show it. We were ticketless travellers. Whenever we came in contact with the officials, either of the MDV, railway or militia, we had to tell them lies to escape from those critical moments. We had taken along a pair of pincers even to open the doors of railway coaches on the opposite side when the officials were checking tickets and documents of other passengers on the front side. When the officials came to check tickets and papers on the moving trains then we either told them all kinds of lies due to which we very often put us in a bad position or we moved slowly on in front of the officials from one coach into another until the train stopped at the next station and we then moved over to those parts of the train which were already checked. We tried to get our food at those stations where there had been made food arrangements for soldiers on transport. They very often took us for soldiers returning from the front. After having travelled for 4 days we arrived in Chkalov (previously called Orenburg). There we had to change the train as we wanted to go to Tashkent. We had to wait there for another train coming from Moscow. It was 6 days late!!! We slept in a park just outside the station. There was a vast crowd of evacuees and it was quite easy for us to hide ourselves amongst them. It was far more difficult to get into the train leaving for Tashkent. It was thanks to a piece of bread of about 200 grams we gave to a railway worker that we got into a coach packed with travellers to the utmost. It was a sort of a corridor, a tiny one, where we had to travel for 6 days with two Russians as our fellow travellers, i. e. 7 persons in an incredibly small space. We arrived in Tashkent and had to stop there to find out what we should do next. So we stayed there for a week and then decided to go on to Stalinabad. We knew that on this line the railway was running for miles just alongside the Russian and Afghanistan border, perhaps in some places only half a mile from the border. We hoped to get just there over the border. But it turned out differently because all the trains and stations were so heavily guarded that we could not help going on to Stalinabad. There

we were in a most miserable situation. For a couple of nights we slept at the station. We were so awfully tired and exhausted that I did not notice when one night my boots were stolen from my feet while sleeping. I had only a pocket watch left which I had to sell in order to get money for buying new boots.

We could not possibly find any other way out of that predicament as to go to the local recruiting office and tell them that we were Estonians from the Estonian Division on sick leave and as we were feeling now better and almost fully recovered we would like to be sent back to our units. When they asked our papers we said that they had been stolen on our way. They believed it because thefts were most common in those days. We had to pass a medical examination but we had to wait for it approximately for a week. We had been fortunate beyond any expectation because now we were out of that state of an outlaw and could rest in peace. We got each 500 grams of bread per day and a plate of soup twice. We all passed the medical examination all right although I had hernia which I had got while working in the forestry. Fortunately the doctors had not noticed it as otherwise it would have certainly been a reason for my disqualification. We got all the necessary papers and documents including a permit for food on the way. We left Stalinabad immediately and came to Termes near the Afghan boundary. But I am sorry to say that as had happened before we were unsuccessful in crossing the border this time too. According to our railway warrants we ought to have gone to the north but we turned to the west instead and came to Ashknabad in order to try to go to Iran. There we were told that the northern part of Iran was occupied by the Red Army. Consequently we had to give up that plan. We started back again, came to Mery, changed the train there and started off for Kushka. After having travelled for about 200 km. we noticed that all the civilian passengers had left the train and we were left alone with only Red Army men of the MDV. It was a clear sign that the train was approaching the border region. It was about 2 o'clock in the night that we left the train under the cover of darkness and moved hurriedly into the nearby hills. Our main and first intention was to get away from the station and roundabout villages as quickly as possible. We walked on until it began to dawn and stopped then for a rest. We did not move during the day owing to the extrame danger. We walked on only in the night and rested in the day time. For food we had only some dry bread and just as much that it would have been enough for 6 days if each of us had eaten about 100 grams in the morning and another 100 grams in the evening. We had to ration that bread accordingly. Well, that was all we had to eat and nothing else. It was especially here that this my primitive map served its purpose excellently. The nearer to the border we came the more dangerous the situation became. We could not show us to the people because it had happened either in 1935 or 1936 that the population of the frontier of about 10–15 km. into the country had been transferred and replaced by the most fanatic communists. We were moving all the time alongside and not very far from a river running towards Afghanistan. From it we fetched us drinking water in the night.

We had been walking for 4 nights. I should think that each night we had moved on about 40 km. But then we became worried. We could still not see any sign of the boundary not that we were approaching it. Our anxiety was increasing steadily. We became doubtful whether we were not moving away from the border altogether. Finally we decided to venture a rather risky attempt. One of us had to enter a village to make inquiries and get information as to the border. Thus a most critical situation was created and we were on the verge of being caught and lost. I must say we had lots of trouble to get out of it again. But we managed it. One thing at least was we had reason enough to be glad about. We had got enough information to make further plans. We went on the whole night and one can imagine what we felt because we were standing on the boundary line. Early in the morning on the 2nd of November, 1942, we finally were able to cross the border and were in Afghanistan. There we gave ourselves up to the authorities. We made to them a most earnest request that we should not be sent back to Russia. So at last our escape journey had come to an end after having lasted for nearly one and a half month and during which we had covered a distance of about 3,000 km. It was such a great relief we felt there that I am hardly able to express it properly. We were interned in Afghanistan which according to oriental conceptions means only imprisonment. We had to spent nearly two years in a jail in Kabul. One must remember that a prison in an oriental country like Afghanistan is something quite different from a prison in Europe, America or in any other civilized country. The danger was always hovering over us that as long as we had to stay there we might have been

sent back to Russia one day. It was the British Government of India which came to our rescue and to the ministers of that Government and to the authorities of Great Britain we all are extremely grateful. They were responsible for the fact that on the 22nd of May, 1944, we arrived in India. It was not until we had arrived in India that we were feeling really free and out of danger. In India I joined a Danish Mission Society working at Mardan in the N. W. F. P. and began working as a missionary.

Throughout all those years since I had left Estonia in 1941 I had had no news whatsoever about my family and relatives. I did not even know whether they were alive or not nor did I know anything about their whereabouts. From India I managed to find out that my family had escaped to Germany and my relatives to Sweden just before the reoccupation of Estonia by the Red Army. After strenuous efforts I got my family to join me in India in 1946. It was a happy reunion after having been separated from them for over 5 years.

The situation in Pakistan but in the N. W. F. P. particularly became very unsafe for us after the division of the country into the Indian Union and Pakistan. Moreover the danger of Russian invasion of Pakistan and of the N. W. F. P. in particular was increasing day by day that consequently I was compelled to leave that country and come to England where I am working together with my wife as domestic workers under the scheme of European Volunteer Workers.

In conclusion I would like to add just a few remarks about the characteristics of the life in the Soviet Union. It was noticeable at every step that the general population of the U. S. S. R. was tired and disgusted with the Bolshevist regime. I met there many who even expressed it though indirectly. The Soviet Government were clever enough to change the propaganda at the right moment. In their propaganda they started to speak about their fatherland and the river Volga which in the minds of the Russian people is considered still to be mother of their country. These both, as was pointed out and especially emphasized by the propagandists, were suddenly in a most grave danger. Previously they had been speaking of the whole world which must be turned communists. That change in propaganda made the people think and waver. And when they went even further in their propaganda and very vividly described how cruelly and even brutally the Germans were treating the Russians then it is no wonder that peoples attitude was changed almost at once and they began to work for the war effort of the U. S. S. R.

In 1942 the U. S. S. R. was on the verge of collapse. It would have been inevitable had Great Britain and the U. S. A. not helped the Soviet Union so enormously. On my escape journey I saw at every station trains full of all kinds of war materials sent either by Great Britain or the U. S. A. No doubt then that it helped Russia so immensely that she was able to overcome the danger which was really very grave. And now the Soviet officials will not admit and recognize, not to speak of their appreciation, that it was the help from these countries due to which they were able to win. They claim instead that it was the Soviet Union alone who won the war and that it was she who rescued even Great Britain and the U. S. A. from destruction.

Much has been spoken about the freedom of religion in the Soviet Union. Perhaps it helps to illustrate it if I say that on my whole journey through Russia, the length of which amounts up to a least 10,000 miles. I did not see one single church which had been still in use as a church. But what I saw was quite a number of churches either in ruins or changed into some community centres or museums.

Passing once through a village I had opportunity to visit an old man in his house. It attracted my attention when in one of the corners there was a so called "red corner" decorated with red flags and the portraits of Stalin, Molotov, etc. and in the opposite corner an old dusty icon was hanging. I asked the man how it is possible that in one room there are so diametrically opposite symbols. He remained silent for a moment and then answered very calmly and thoughtfully that the "red corner" was in accordance with a official order which he could not help. But the icons was still a sign that there is God and that He is still alive. I was really surprised to hear when he went on that although the Government had ordered to put out the perpetual light they used to have in front of icons then now that light was burning in his heart and in those of others peoples. Really an impressive thought which he had expressed in a few words so simply.

Another time I talked with an aged man who showed with every word he said that he was not satisfied with the present regime. When I tried to draw his attention to the fact that it was his opinion and ordinarily that of elderly

people whereas the younger generation was fanatic in supporting that regime then he replied with tears in his eyes that I should not discuss politics with their children. He said that they were no longer their children in that sense that they belonged to the State. He was perfectly right because it is the State which gets hold of the youth from their earliest childhood and brings them up entirely in the spirit of the doctrines of Communism.

Finally all I have said is an impartial, unbiased and true picture of the life in the Soviet Union as I saw it there. It is also a brief but true description of all the sufferings I had to go through. But may I add that I was not the only one who had to undergo that suffering. There were thousands, may even millions who had to suffer the same perhaps even to a much greater extent. And nowadays there are still, millions and millions who are suffering still as we did. It is a great pity that it goes on. It goes on so long the Soviet Union and the Communist doctrine exist and keep countries and nations in their grip.

Be it added that whenever I think back of those years of horror I cannot help wondering that it was God, and only He who guided me throughout those years and that it was God's marvelous grace and mercy that protected me and led me safely out of all the troubles. Without God and His guidance such a miraculous survival and escape would not have been possible.

REV. JULIUS JUHKENTAL.

I herewith certify that the above statement is made by Rev. J. Juhkental at the London Legation of the Republic of Estonia, on July 7, 1948, and solemnly signed by his own hand.

This copy is an accurate and unaltered duplicate of the original document.

Stockholm, February 15, 1949.

J. KLESMENT,
Estonian Minister of Justice.

STATEMENT OF JÜRI AAV

I, the undersigned Jüri Aav, born on the island of Kihnu, Estonia, on December 2, 1907, make the following statement:

I arrived in Glasgow, England, as a member of the crew of the Estonian steamship *Keila* in September 1940. At that time the crew was warned by a Soviet representative that if we do not leave the steamer, we will never be permitted to return to our homeland. The British authorities did not make any objections to our furthr employment on the same steamer. However, on the Soviet representative's insistence the crew left the steamer and was given free lodgings plus £10 per month. A club was organized by Soviet agents for Baltic sailors, where different lectures and games were arranged. There was also a radio installed in the clubroom which was often tuned to Estonia and Moscow over which at certain hours we heard greetings from relatives at home, urging us to return and praising their life under the Soviet regime. Sometimes the Soviet consul was lecturing to us about the brilliant conditions in Soviet Russia.

Ofter a few months there were less and less visiting seamen at the club.

One day the Soviet consul appeared at the club and offered jobs on the former Estonian steamer *Elna*, which was then flying already the British flag. The Soviet consul had previously collected crews for the same vessel from the same type of clubs in other English ports, but these crews had deserted the ship.

I enlisted on that ship for the purpose of returning home where my mother and brother are living.

In the early autumn of 1941 we sailed with the steamship *Elna* from England under the British flag and in convoy. While at sea, the British flag was replaced by the Soviet Russian flag. In about 4 months we arrived at Archangel. There the crew was taken ashore by Soviet authorities. For a few weeks we received free lodgings, but for the food we had to pay ourselves. Contrary to the promises of the Soviet consul in England that the crew on the arrival in Russia can take any oceangoing vessel, we were ordered to take jobs on small coastal vessels. All Estonians were dispersed in groups of two on different vessels.

Some months later all Estonian documents were taken away from the Estonian sailors and they were forced to accept Soviet passports under threat to be shot in case of refusal. I and some other Estonians who were in Murmansk at that time serving on a coastal boat were ordered to Archangel to receive Russian passports.

The Estonian seamen who were in Archangel sent many petitions to Soviet authorities and also to Joseph Stalin personally, requesting permission to leave Russia.

Last October permission was granted us to take foreign-going ships. That astonished all of us very much. I personally believe that some influence was exercised by the British representatives in Russia to whom some of us had also appealed for help.

Our Russian passports were taken back. We had to give to the Soviet authorities written promises that we will never return to Soviet Russia, neither to Estonia, if Estonia should be a Soviet Republic.

Through the assistance of the American agent at Archangel I got a job on the American steamship *Campfire* and arrived in New York on or about February 1, 1943.

While in service on the coastal vessels in Soviet Russia I was to get, according to the agreement, 410 rubles per month as basic wages plus 120 rubles as an allowance for food, also free working clothes and free linen. From my basic wages they deducted 83 rubles as some type of tax, because I was a bachelor. I never saw the 120 rubles for food, because that was kept by the quartermaster. Our daily meals consisted of the following: breakfast, hot water and black bread; lunch, codfish soup which consisted mostly of water and where on rare occasions a small piece (around 10 grams) of codfish could be found. Sometimes we had for a second dish some type of porridge or two salted sardines. Dinner was the same—warmed up soup that was left over from lunch with an occasional few spoonsful of porridge. The usual daily rate of black bread was 800 grams, but during 2 months of my service I got only 600 grams. Other foods, like sugar, butter, or some fats were rarely available, and if so, we had to pay for them from our wages. The official price of 200 grams of butter was about 25 rubles.

Sometimes there was an opportunity to buy some products on the free market at Archangel at exorbitant prices. For instance, the price of 1 kilogram of potatoes was 60–70 rubles; 1 liter of milk, 80–85 rubles; 1 kilogram of cabbage, 45–50 rubles. Bread and tobacco were not available on the free market. The black-market price of bread was 100 rubles per kilogram, and tobacco 250 rubles per 100 grams.

From my wages I was compelled to buy various lottery tickets and national loan bonds, and so forth. Sometimes in order to cover all those expenses I did not receive a cent of my wages and had to use my former spare sums.

The food on the coastal ships was so poor that I and other members of the crew became physically so weak that we could not work properly. I and another Estonian became sick with diarrhea which lasted for 8 days while we were on board ship. In Archangel I was ordered to visit a physician. I and my friend were so weak that we could not walk, and there were no taxis. Some Estonians from ashore came to help us to be taken to the doctor. While ashore, I had to call every other day at the doctor, otherwise I would have lost my food card.

In Archangel I met about 100 Estonians who had been deported from Estonia by the Soviet authorities. From my conversations with them I gathered that there were around 3,000 Estonian deportees (all men) in the neighborhood of Archangel. They did not know about the fate of their families. These Estonians were doing different work—such as manual labor in the harbor and in factories. They all were in rags and physically exhausted and on the verge of collapse. According to their talk, about 25 percent of all Estonian deportees in Archangel proper have died of privation. They were suffering from scorbutus (swelling of the legs and loosening of the teeth from undernourishment).

In June 1942 the majority of these deportees were sent somewhere to the Urals.

Those few Estonians whom I saw last in Archangel were looking yellow in their faces and were physically completely exhausted, and I am convinced that they could not survive this winter.

JÜRI AAV.

Sworn to before me this 23d day of February 1943.

JOHN A. KERSHAW,
Notary Public, New York County, N. Y.

STATEMENT OF GEORGE TENG

The mass arrests in Estonia were first executed by Soviet authorities in the year of 1941. The reasons for such measures are unknown to me, as no organized resistance—in spite of strong antipathy—was made to the occupants. All who could have been of any danger to the Soviet were promptly shot or imprisoned

long before that. And yet, in Tallinn, on the night of the 14–15th of June there occurred a mass hording of innocent people: this was to start a period of humiliation and terror to the Estonian population.

It is estimated that approximately 14,000 people were seized on that night and during the day of the 15th of June. Among the victims were former civil-service servants, members of police, officers of armed forces of the Estonian Republic, members of the former Estonian National Defense League, lawyers, businessmen, artists, writers, tutors—even just proprietors of houses. All the unfortunate were arrested with families.

The arrests started around midnight when a lorry drove in front of the victim's house, three or four armed Soviet soldiers or sailors guarded while one or two members of the political police (N. K. V. D.) and usually one Estonian militiaman—all armed—entered the house and informed the victim that he or she, with the family, were arrested and had exactly 30 minutes to pack the things they considered necessary. No reasons were given why the person was arrested, nor any explanations as to where he would be taken—or the rest of the family. The victims were then put on the lorry and transported to the Kopli railway station in Tallinn, where the women and children were unscrupulously separated from the men. Then all were locked into railway carriages designed and built for the transportation of goods and cattle only. There they were kept for a few days, trains guarded by armed forces and fully isolated.

The trains then left Tallinn, and were last seen crossing the Soviet border. Needless to say, anybody offering the slightest resistance was shot on the spot. No exceptions were made and no attention was paid to any sickness or disease, nor progressive state of pregnancy. No explanation was given in the press.

Next similar move in Tallinn was made by the Russians on the night of the last of June. This time victims were exclusively men between the ages of 17 and 27; therefore, methods were entirely different. Two or three policemen called at approximately 3 o'clock in the morning, informing the victim that he was supposed to report at the Singing Festival Stadium in Tallinn by 8 o'clock in the morning. He was supposed to take with him 5 days' provisions and a few pairs of underwear. Again no reasons were given.

It was made clear, however, that if he failed to appear by 1 o'clock at the appointed place, his nearest relatives would face the consequences. About 3,000 men got such invitations; because of the threat mentioned above, very few failed to report.

All the documents were collected and the victims were held in open air, guarded by Soviet forces, until the 4th of July, when they were marched to the harbor of Tallinn and boarded ships at once, then anchored outside of Tallinn until the next morning. On the 5th of July the convoy left for Leningrad.

No food was issued to anybody up to that time. In Leningrad the deportees disembarked and were put into freight cars—50 to 60 in a carriage. Two slices of bread and an egg were issued there. There was no accommodations whatsoever; no water, and it was strictly prohibited to leave the carriage—the carriages were, however, unlocked. No permission was granted to leave the train to satisfy the normal physical needs.

After 4 to 5 days' journey by train, without food, the deportees reached Uljanovsk, where they were divided in two groups; one of which left the same day for a small town near the Urals, and next day the other half was marched to the Volga Harbor and shipped to Kasan. They were then marched approximately 20 miles to a huge military camp where it was made known that they were about to undergo the recruit training of the Soviet. Uniforms were issued and regular food—consisting of 400 grams of bread once and porridge soup thrice daily—were given. There were no tents for the Estonians; most of the time they had to live in the open air, sleeping on rotten sacks of hay.

For 2 months they had to undergo the military training—without any arms being issued. Most of the training consisted of political lectures by politruks (political instructors—members of the Communist Party attached to the army to represent the party). With all the officers and noncommissioned staff being Russians, all the training was done through a few interpreters. There were no leaves of any kind; it was forbidden to leave the camp area.

Then came an abrupt change. All the former staff was replaced, and all the uniforms were replaced by ex-uniforms. From that time on no shoes, in however bad a state, were exchanged. All the Estonians were then marched 3 miles from the camp to a big building that had not been used for years and was unfit for living. Here it was announced that they were in a working camp and were prisoners. No reasons were given. The answer to the inquiry regarding the time of imprisonment was, briefly: "You are going to rot here."

Those who refused to work were not supposed to get food, but even the workers did not get it regularly. The typical work was:

(*a*) Loading or discharging barges on the Volga about 10 miles from the building—from where and whereto the prisoners were marched every morning and returned every evening. The reveille was at 6 a. m. and the time of return 10 p. m.

(*b*) Carrying timber from a forest 10 miles away. The carrying was done by groups of 10 or 15 men without any equipment. Usually the tree trunks were carried on their shoulders. Working time as before.

(*c*) Digging potatoes from frozen grounds on collective farms 20 to 30 miles away. Prisoners were marched there and back. When at work too late it was sometimes necessary to spend the nights at the farms. Then they would sleep in barns, out of doors, or very rarely in farmer's houses.

No working clothes were issued and one's worn clothes became extremely shabby. In all that time there was only 1 day for bathing. Soap was issued only on that day.

Sleeping in the building was done on floors; no beds or anything of the kind was ever offered. The prisoners were guarded, and no medical help was given, although there was one nurse attached to approximately 1,500 men. For the slightest disobedience the punishment was confinement to the cellar in the same building with food once a day—no bread and only a poor imitation of soup. This cellar was so small that if 20 people were under arrest, all of them could not sit down.

At that time there was an epidemic of dysentery. No medical help was given and prisoners too weak to move were left on the floor of a special room. The nurse did give some pills. There was no toilet in the building. As the sick cases were too weak to walk at all, they had to manage in the same room. There was nobody to clear after them, except those who did it voluntarily. After a few cases of death the worst cases were sent to a hospital in Kazan, where more people died.

After 2 months in that camp—which was for some reason or other called Farm No. 1—the other group which was separated in Uljanovsk arrived in Kazan, and the whole lot lived for a few days in a field. Then they were loaded on a freight train, and after 6 days' traveling reached Tseljabinsk in northwestern Siberia. The conditions in carriages were worse this time; for in addition to the previous discomforts, it was very cold and so many men were squeezed into a carriage that it was impossible to move. No food was given.

The new camp was a mile outside Tseljabinsk and prisoners had to live in half-built wooden houses. Usually half of the building was missing—or there was just the skeleton of it. The other half, incomplete as well, had rooms with three wooden shelves built along one wall—leaving approximately 1½ yards for standing space. On these shelves the prisoners slept. Nothing was given to sleep on but one thin blanket, and while sleeping there was so little room that all sleepers had to lie on one side. There was one small iron oven in nearly every room, and only a small bucket of coal was given daily. No clothes were exchanged, nor any additional given. If boots literally collapsed, the prisoner was issued a pair of wooden sandals. Instead of sock, pieces of cloth had to be used. There were, of course, no toilets in the house, nor any place for washing. The temperature outside fell sometimes as low as 45° C. below zero. Once in 2 months the prisoners were marched to a bath in town, where one small piece of soap was issued. Once the underwear was changed and the clothes delousedwith no results. Everybody in the camp had lice, and the majority scabies. It was impossible to get rid of either of them, for nothing was done about it. The guards—and indeed most of the population of Russia—had the same troubles.

Here cases of typhus, dysentery, jaundice, scurvy, and exhaustion frequently occurred. In one of the houses there was the first-aid quarters, with one nurse attached to it. She was, however, unable to do anything but take the temperature and give one sort of pill for every disease. As a matter of fact, she did not have any other medicines. The camp authorities—the nurse included—were very suspicious and usually decided to send the sick man to the hospital when he was ready to die. Some died in the camp. In the beginning frozen limbs were frequent occurrences and were looked upon as a headache is in normal life. However, prompt action was taken by the nurse when it was too late. Very soon the prisoners learned to rub themselves with snow often enough to prevent it.

All the sick were left in the rooms they lived in, and received no extra food. Regular food was as follows: (*a*) for 100 percent work, 400 grams of bread and soup three times a day; (*b*) for work under 100 percent and for those who refused to work, 100 grams of bread and the rest as others.

Work was done either somewhere outside the camp—and mostly consisted of digging the frozen ground—or in the Tseljabinsk tractor factory where it was all hard labor.

For punishment there were detention quarters in the camp; it was a narrow wooden shed with an open window on one side and a broken iron oven in the corner of the other. The latter was never used, and the temperature inside was only slightly higher than outdoors. The shed was so narrow that if men slept along both walls, sleepers of one side had to put their feet on the sleepers of the other side. This was done in turns. No permission was given to leave the shed, and the iron oven was used as a water closet. Food once a day.

A high, barbed-wire fence surrounded the camp. Guards were mostly Mongols. And every house had one politruck who had unlimited powers and the right to shoot the prisoners who showed resistance. Already in Kasan it was announced that for attempts to escape the penalty was death.

In February 1942 the whole camp was evacuated by trains from Tseljabinsk. The destination and fate of the prisoners are unknown.

The facts given above are based on my personal experience.

GEORG TENG.

Sworn to before me this 12th day of April 1945, New York, N. Y.

[SEAL] ANNA Z. LEE, *Notary Public, Kings County, N. Y.*

Senator MCMAHON. We will meet at 2:30 in this room.

(Whereupon, at 10:35 a. m. the subcommittee recessed, to reconvene at 2:30 p. m. this day.)

AFTERNOON SESSION

Senator MCMAHON. This afternoon we are to hear from Mr. Carl R. Rix, past president of the American Bar Association, Mr. George A. Finch, and Mr. Alfred J. Schweppe, chairman of the committee, who are going to appear in opposition to the ratification of the convention.

We are also going to hear from Judge L. H. Peres, district attorney of Louisiana, who is in opposition; Mr. Thomas Dodd, of Hartford, Conn., who is a proponent. Also, we have Mr. Charles W. Tillott and two of his associates, who are proponents of the ratification. Shall we proceed?

STATEMENT OF ALFRED J. SCHWEPPE, CHAIRMAN OF SPECIAL COMMITTEE ON PEACE AND LAW THROUGH UNITED NATIONS OF THE AMERICAN BAR ASSOCIATION

Mr. SCHWEPPE. I am Mr. Schweppe. My residence is in Seattle, Wash.

Senator MCMAHON. All right, sir.

Mr. SCHWEPPE. I appreciate the invitation to be here today. I appear as chairman of the American Bar Association's Committee on Peace and Law Through the United Nations and am accompanied by two associates on the committee, by Mr. Carl B. Rix, of Milwaukee, vice chairman and former chairman of our committee, a former president of the American Bar Association, and by Mr. George A. Finch, of Washington, D. C., who is editor in chief of the American Journal of International Law, professor of international law, a former member of the State Department, a member of both our committee and

also of the section of international law of the American Bar Association, which has been repeatedly mentioned in this hearing, and one of this country's eminent international lawyers; one who lives a quiet, scholarly life in the Nation's Capital but whose counsel is widely sought by informed men throughout the country.

COMMITTEE ON PEACE AND LAW THROUGH THE UNITED NATIONS

For your information, the American Bar Association's Special Committee on Peace and Law Through United Nations was formed some years ago to support the work of the United Nations and to make studies of its activities with a view to assisting that body and the State Department in promoting peace and law throughout the world. The committee was originally, and until his death, about a year ago, headed by Judge William L. Ransom, of New York City, one of this country's most distinguished lawyers. Throughout the period of formation of the Statute of the World Court, the Charter of the United Nations, the work for codification of international law, the formative days of the United Nations, and in the organization of group conferences of lawyers throughout the country to study and forward the work of the United Nations, and to guide the actions of the house of delegates of the American Bar Association in matters pertaining to the United Nations, Judge Ransom was a great leader. On his untimely death he was succeeded as chairman by Mr. Carl B. Rix, of Milwaukee, a veteran member of the committee whose name appears as chairman on the last printed report of the committee, to which frequent reference has been made here. Mr. Rix retired as chairman last fall, though consenting to remain as vice chairman; and now the responsibility of chairman has fallen on me, a grass-roots lawyer from Seattle, Wash.; where the roots strike deep, and where the grass, unlike that in our good neighbor State of California, is green the year around.

The Committee on Peace and Law consists of nine persons, three of whom are here present and will state their views. The other members now are United States Circuit Judge Orie L. Phillips, of Denver, Colo.; Thomas J. Dodd, of Hartford, Conn.; Cody Fowler, of Tampa, Fla.; Judge Nathan L. Miller, of New York City; Gerald Schroeder, of Detroit, Mich.; and James C. Sheppard, Los Angeles, Calif. This committee held regional conferences on the Statute of the World Court, and the codification of internationl law, and on its recommendation, this work of the United Nations was supported by the house of delegates of the American Bar Association. It last year held regional conferences on the proposed Covenant on Human Rights and on the Genocide Convention in 16 cities throughout the country for the purpose of ascertaining the views of the bar on these proposals. Contrary to a suggestion made in this record by one of yesterday's spokesmen, these regional conferences were serious study groups led by such informed men as Judge Manley O. Hudson, of Harvard, long a judge of the World Court, United States Circuit Judge Orie L. Phillips, Mr. Carl B. Rix, George A. Finch, Frank E. Holman, former president of the American Bar Association, and others. These regional conferences are not for propaganda, but for study and analysis, with a view to appraising and assisting the work of the United Nations and the position of the United States in that work. The

committee is uncompensated and devotes many days each year to its work. This outline is presented partly to give you a picture of the work of the committee, partly to make it clear that the Genocide Convention is but one phase of its work, and partly to indicate that the field of the committee is such that you will probably be hearing from it from time to time in the future, as the Senate has in the past.

NO RESENTMENT OVER CRITICISM

I am proud to be here as a member of what in this hearing appears to be the somewhat unpopular Committee on Peace and Law of the American Bar Association. We hold no feeling of resentment about these criticisms, which we know are born of zeal for a noble cause, and are the sort of things that lawyers living on life's firing line often hear and are thoroughly used to. I am proud, in part, because the position of our committee has apparently been responsible for bringing to your subcommittee much discussion from proponents of this convention, which, except for our committee report and the action of the house of delegates of the American Bar Association, your subcommittee might not have had. Honest criticism such as made by our committee, and the argument which it has provoked, is bound to bring these problems into sharp relief and to assist you gentlemen in formulating your conclusions.

I am proud, further, because the only purpose of our studies has been to be of impartial and constructive assistance to the State Department and to the United States Senate in arriving at informed conclusions. We have no ax to grind and no weapons to wield except the validity of our arguments. We offer no propaganda and ask nothing except that the United States Senate base its decision upon full knowledge of all the pertinent considerations. By that decision we shall abide, and will probably be back another day to advise with you on other problems.

Like yourselves, we are proud of the United States of America, of its form of government, and of its position in the world; and anything we say is offered in a spirit of love for our country and the preservation of peace and law everywhere.

PERSONALLY OPPOSED TO GENOCIDE

For my part, I yield to no one in my opposition to genocide or in my desire to have Jews, persons of color, and other minority groups receive fair treatment throughout the world. I have a law partner who is a Jew and he is my partner by my own choice, one of the finest men at our bar. I was for some years an official of the Urban League of Seattle, devoted to the advancement of colored people. I have at times represented the American Civil Liberties Union to preserve the essential freedoms of the Bill of Rights. I say these things, not to bore you with a recital of my social interests, but solely to show that anything I, or our Committee, has to offer is predicated not on bias, prejudice, or timidity, but solely on views which are honestly entertained and which we are prepared to discuss in a climate of complete intellectual dignity and impartiality.

We start out, then, with the concept that we are all vigorously opposed to genocide. Any other suggestion about any citizen of the

United States would strike me as an unworthy suggestion, born of momentary emotionalism. But our problem is whether the instrument before you is the one by which we shall accomplish the prevention of genocide, and whether we render a service to the American people and to the world by ratifying this convention as submitted.

RESOLUTION OF ABA HOUSE OF DELEGATES

With respect to my ensuing remarks, I want to say that I speak here solely as a member of the peace and law committee of the American Bar Association. I do not speak for the American Bar Association as such, since it speaks officially only by formal action, as does the United States Senate. Its official action has been an official resolution, of which your subcommittee has copies, and in which it is resolved by the house of delegates, the official voice of that association—

that the Convention on Genocide now before the United States Senate be not approved as submitted.

For the record, I here offer a copy of this resolution of the house of delegates, and also a copy of the report of the Special Committee on Peace and Law which constitutes a part of the background for this resolution.

Senator McMAHON. Do you wish to be interrupted?

Mr. SCHWEPPE. I don't mind at all, sir.

Senator McMAHON. When the house of delegates decided that it should not be approved, did they submit at the same time any suggested understandings or reservations?

Mr. SCHWEPPE. No, they did not. Let me say this: The section on international law submitted a recommendation favoring approval, with seven reservations. That came up for debate first and was voted down. The resolution that was adopted by the American Bar Association was a resolution that was prepared by a special committee of the house of delegates which held hearings the day before to evolve, if possible, what was the alleged conflict between the peace and law committee and the section on international law, and it was the resolution of the special committee of the house that was approved.

In addition, I offer for the record the citation of an address by our Mr. Carl B. Rix, former chairman, and now vice chairman of our committee, as printed in the Congressional Record for July 26, 1949, page A5018.

(The matter referred to is as follows:)

REPORT OF SPECIAL COMMITTEE ON PEACE AND LAW THROUGH UNITED NATIONS, SEPTEMBER 1, 1949

ACTION OF HOUSE OF DELEGATES

The chairman of the special committee moved the adoption of the committee's recommendations 1 and 2 that the Genocide Convention, as submitted, be not ratified by the United States. The special committee of the house of delegates, appointed to consider these recommendations, and a resolution dealing with the same subject proposed by the section of international and comparative law, then proposed a substitute resolution for the resolutions of the special committee and the section. The chairman of the section then moved the adoption of the section's resolution approving a ratification of the Genocide Convention with reservations. After extended debate, the section's resolution was put to a vote

and was rejected. The substitute resolution of the special committee of the house was then put to a vote and was adopted as follows:

"*Be it resolved*, that it is the sense of the American Bar Association that the conscience of America like that of the civilized world revolts against Genocide (mass killing and destruction of peoples); that such acts are contrary to the moral law and are abhorrent to all who have a proper and decent regard for the dignity of human beings, regardless of the national, ethnical, racial, religious or political groups to which they belong; that Genocide as thus understood should have the constant opposition of the government of the United States and of all of its people.

"*Be it further resolved*, that the suppression and punishment of Genocide under an international convention to which it is proposed the United States shall be a party involves important constitutional questions; that the proposed convention raises important fundamental questions but does not resolve them in a manner consistent with our form of Government.

Therefore, be it resolved, that the convention on Genocide now before the United States Senate be not approved as submitted.

"*Be it resolved further*, that copies of the report of the Special Committee on Peace and Law Through United Nations and the suggested resolutions from the Section of International and Comparative Law be transmitted, together with a copy of this resolution, to the appropriate committees of the United States Senate and House of Representatives."

I. FOREWORD

At the midwinter meeting in Chicago, in February of this year, two resolutions were adopted by the house of delegates, each requesting of our Government adequate time to study—first, the proposed International Convention on Human Rights, then in draft form and proposed to be acted on by the General Assembly of the United Nations at its May 1949 meeting, and second, the Genocide Convention which had been approved by the United Nations Assembly and was then ready for submission to the United States Senate.

As a result, we think, of such action by the house of delegates, implemented by the efforts of the president of your association, the United Nations Commission on Human Rights, after preparing a revised International Covenant on Human Rights in a 6 weeks' session at Lake Success ending on June 20, 1949, determined to delay action and transmitted the draft covenant and measures for implementation to member governments for comment. The Commission has "fixed January 1, 1950, as the final date on which all proposals concerning these drafts should be received by the secretariat. The Commission will reconvene for a sixth session early in 1950 to revise the documents in the light of the comments received from governments, which when completed at the 1950 session, will be forwarded to the Economic and Social Council and then to the General Assembly for its consideration in the fall of 1950" (XXI State Department Bulletin No. 523, July 11, 1949, p. 3).

This latest draft of the proposed International Covenant on Human Rights is attached to this report as appendix A.

The genocide pact which was adopted by the General Assembly of the United Nations in Paris on December 10, 1948, and signed on behalf of the United States on December 11, 1948, was on June 16, 1949, transmitted by President Truman to the United States Senate for consideration, with the recommendation, based on the approval of the State Department (which contains a reservation of one "understanding"), that the Senate advise and consent to ratification of the convention.

The Genocide Convention was referred to by the Senate to its Committee on Foreign Relations, which has the proposed treaty under study and has indicated that it expects to hold hearings.

The convention, the President's message of transmittal, and the report by the Acting Secretary of State to the President, incorporated in the message of transmittal, are submitted with this report as appendix D.

During the interval between the midwinter meeting of the house of delegates in February and the preparation of this report, under a grant for the activities of the committee by the Carnegie Endowment for International Peace and the board of governors of the American Bar Association, there have been held regional conferences of members of the bar in many cities of the United States to study and consider the proposed International Covenant on Human Rights and the

Genocide Convention, and germane legal and constitutional questions. Two meetings have been had with the Canadian Bar Association. Meetings were held in the following cities: Boston, Omaha, Tulsa, Chicago, Detroit, Milwaukee, New Orleans, Dallas, Savannah, Seattle, St. Louis, Cleveland, Denver, San Francisco, Birmingham, and Minneapolis.

The moderators were President Frank E. Holman, Judge Manley O. Hudson, Judge Orie L. Phillips, George A. Finch, Alfred J. Schweppe and Carl B. Rix. The educational value of the conferences is pronounced and much of value was learned from them. Every effort was made to include various shades of opinion. It is regretted that the conference type of meeting must be of a restricted number. It is impossible in the limits of this report to submit the consensus of the meetings. In the main this report reflects the consensus. For use in the conferences Judge Ransom prepared a booklet, "Documents for Study", containing the essentials for study of the constitutional problems, the drafts of treaties, and other valuable information. A number are available for distribution and an additional supply may be printed. The work has spread and bar associations have fostered local meetings. This work should be greatly extended and should be embraced in all programs of advanced legal education. The address of the chairman, at the annual meeting of the American Society of International Law, on Human Rights and International Law, has been printed in the July number of the Journal of the American Bar Association and in the Congressional Record, July 26, 1949, p. A5018. An article by Judge Orie L. Phillips on the Genocide Convention appears in the August issue of the Journal page 623. These should be read in connection with this report.

II. THE NEW CONCEPT

At a time in the history of the world when economic conditions, resulting largely from two devastating wars, are forcing nations to demand sacrifices of their individual freedoms to conform to Socialist states or alien ideologies, the same peoples are being asked to adjust themselves to revolutionary changes in their relations with their own people and the people of other nations. It does not seem to be enough that they should be led by example and teaching to new ways of conduct. Under international codes of conduct called treaties they are to accept the changes by law. Government by treaties is the new concept.

Wherever possible, trials before international courts for violations are demanded and, failing that, great bodies of domestic laws creating new rights and crimes are to be provided and enforced by the states. All this is under the claim that individual acts and conduct menace the peace and security of the world.

Peoples who do not know the meaning of freedoms are to be metamorphosed into judges of the freedoms of others. A common pattern is to be set for billions of people of different languages, religions, standards of living, culture, education, and mental and physical capacity. A few people, with beliefs utterly foreign to each other, meet, debate, and by majority vote seek to determine how the people of the world shall live on a common pattern. To bring some people to a higher standard, those far above those standards, under the guise of precarious sacrifice to the common good, are to accept the mediocrity of the average. Are the people of the United States ready for such sweeping changes?

From the new draft declaration of the Rights and Duties of States we quote article 6:

"Every state has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms and without distinction as to race, sex, language or religion."

Judge Manley O. Hudson, Chairman of the Commission, stated that he voted against the draft declaration because the provisions of article 6 went beyond the Charter of the United Nations and beyond international law at its present stage of development. American Bar Association Journal, August 1949, page 689.

In the past 10 years strong currents of opinion have developed to substitute the concept of the state as the creator and enforcer of international law by a concept under which the individual will supplant the state in that role, with individual liability for it and corresponding privileges and rights of an unknown extent. Do the people of the United States or world know anything about these fundamental changes? Have they had any choice in determining the eztent of these changes? Have they by customary law, from which the great force of international law has been derived through the ages, set the pattern for these entirely new concepts?

If overenthusiasm or failure to estimate properly the difficulties of the task have led individuals and nations to embark on a program of revolution by treaty law, is it too late to retrace the steps and start on a new policy? The development of the moral force of the United Nations for peace and order in the world is set forth dramatically in the introduction to the Fourth Annual Report of Secretary General Trygve Lie on the work of the United Nations.

If a failure to consider the effect of treaty law in the United States has led to a program for the creation of such law effecting serious changes in the constitutional basis of the United States, then in the cause of pease throughout the world, through a strong United States, the policy could be changed to the purpose of the United Nations—the use of moral force. All freedom-loving nations can join in such a fight. At the same time, through regional agreements such as the Atlantic Pact and the Treaty of Mutual Assistance, aggression will be proscribed.

III. DOMESTIC QUESTIONS AND INTERVENTION

In connection with the broadening program of the United Nations in the fields of social and political welfare, consideration must be given to the Charter of the United Nations which provides in article 2 (7):

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."

We do not believe that the article was inserted in the Charter to be of no force and effect. The President of the United States and the Secretary of State advised the Senate and the people of the United States that it was to have effect. We are fortified in that opinion by article 3 of the Draft Declaration of the Rights and Duties of States, which has just been adopted by the International Law Commission:

"Every state has the duty to refrain from intervention in the internal or external affairs of any other state."

Recently Judge Florence Allen, at a meeting in Detroit of the Inter-American Bar Association, delivered a striking address in which she discussed the policy of the United Nations of intervention in the internal affairs of nations contrary to the provisions of article 2 (7) of the Charter. She says:

"The maintenance of human rights and freedoms without distinction of race, sex, language, or religions necessarily will often involve domestic questions, arising wholly within one nation's territory, out of matters within her domestic jurisdiction."

She points out in a forceful manner that the policy of the United Nations constitutes a renewal of the intervention theory in international practice which has been discarded and for which has been substituted the good neighbor theory. She asks:

"Can domestic law be written for every nation by treaty?"

Her address will be available for study shortly.

The attempted limitation of article 2 (7) is accomplished by the doctrine, the latest pronouncement of which is set forth in the article of Moses Moskowitz in the American Bar Association Journal, April 1949, page 285:

"Perhaps the correct position would be that once a matter has become, in one way or another, the subject of regulation by the United Nations, be it by resolution of the General Assembly or by convention between member states at the instance of the United Nations, that subject ceases to be a matter being 'essentially within the domestic jurisdiction of the member states.'"

We were always under the impression that it took both parties to change a contract. If by treaty pure domestic questions become international matters, then only the highest degree of care must be exercised in the ratification of treaties.

In the support of the United Nations your committee asserts that its duty is to protect all provisions of the Charter until it is properly amended by the nations which created it, and that it has a correlative duty to protect the Constitution of the United States until it is amended.

The issues are:

1. Shall we be governed in internal affairs by treaty law or by laws passed by Congress with a constitutional basis?

2. Shall our foreign policy be intervention or good neighbor, as Judge Allen has pointed out? It cannot be both.

IV. INDIVIDUAL RESPONSIBILITY IN INTERNATIONAL LAW

We have referred to the new premise that international law is no longer only the law of states but that of individuals. That doctrine has been asserted with great confidence in spite of its growth of 10 years. Very few attempts have been made at an appraisal of the obligations and the possible rights created under it. An eminent international lawyer, Dr. Philip C. Jessup, in his book, A Modern Law of Nations, has given his views, which we quote without comment, p. 137:

"With the acknowledgment of the individual as a person of international law, it will no longer be necessary to speak solely in terms of the rights of states when dealing with privileges and rights conferred by commercial treaties and other treaties dealing with economic and social rights. States may still conclude treaties on behalf of their nationals; they may be, so to speak, convenient instruments for collective bargainng. The state may retain its own right to proceed against another state in case of a treaty breach, but the individual citizen may likewise have his own procedures for vindication of his own rights. Thus the infringement of a trademark or patent under the protection of an international convention may be the basis for a cause of action in an appropriate forum by the individual possessor of the right, which he would derive immediately from the convention and not mediately through some national law passed for the implementation of the treaty. Procedurally speaking, it may prove advantageous to have suits instituted first in national courts, but there might be subsequent review by an international tribunal, as already discussed in claims cases. Likewise the individual, black or white, would have a cause of action in case he or she were the victim of a breach of an international slavery convention. More prosaically, the individual businessman, air line, or steamship company would not have to wait on the slow wheels of diplomacy to secure damages for a violation of rights under a bipartite treaty of commerce or a multipartite convention concerning commerce and navigation."

The Geoncide Convention is based on that doctrine.

V. TREATY LAW AS DOMESTIC LAW OF THE LAND—AS SUPREME LAW UNDER THE CONSTITUTION

From the article Human Rights and International Law, American Bar Association Journal, July 1949, page 551, we use the following statements of the constitutional position of the United States under treaty law, and invite the most careful study of the subject:

"The full impact of the proposed treaties of genocide and human rights in the United States is revealed in the next question—What is the effect of treaty law as domestic law of the land, as supreme law under the Constitution?

"In your discussions at the meeting last year of the effect of customary international law as domestic law, Dr. Hyde referred several times to the question of treaties as domestic law under the Constitution of the United States, but the subject was not pursued. It took an English lawyer, Professor Lauterpacht, to make clear to us anew our constitutional position in these words, p. 179:

"The distinction between 'domestic law' and 'constitution' is deliberate. As to the first, it is clear that in the absence of a special enactment or declaration by the national legislature, the Bill of Rights, even when ratified, would not, in most countries, necessarily become part of the municipal law of States ratifying it. In the United States article VI (2) of the Constitution provides that all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

" 'To that article the courts of the United States have given a generous interpretation, amounting occasionally to an attribution to a treaty of an effect dangerously approaching that of a constitutional amendment. But in other countries a duly ratified treaty is not part of municipal law until it has been made so by an express act of the national legislature. In Great Britain treaties affecting private rights—and these include practically all treaties—do not become the law of the land unless they have been made so by a special act of Parliament.'

"Since the above was written in 1944, to a limited degree the same effect is had in France. Involved herein is the difficult question of a treaty which is self-executing in whole or in part. The mere fact of the necessity of implementation by legislation, such as the definition of crimes under international law and fixing penalties, does not make a treaty non-self-executing. It seems to be plain

that the essential portions of the Genocide Treaty and the proposed Human Rights Treaty are self-executing, in spite of the note of the drafters of the latter to the contrary. Only clear intent in the treaty itself can prevent the automatic operation of the Constitution of the United States. Thus there may be created, as law, a third body of treaty law in this country with no constitutional basis whatsoever, of equal dignity with our Constitution, as supreme law of the land, superseding all State constitutions, decisions, and laws of the States covering the same subjects, and probably superior to all prior enacted laws of Congress on the subject. Of course, it is no answer that subsequently enacted laws by Congress may abrogate or terminate a treaty. This country is not in the habit of ratifying treaties with the intention of repudiation. The effect in this country of a ratified treaty of human rights and, in a limited degree, the Genocide Treaty, in a field which has been almost exclusive in the States, is so far-reaching in its consequence that the word "revolutionary" is not fully descriptive. Again, it is no answer to say that the treaty is non-self-executing. Under international law the duty to implement a treaty fully and completely is of the same high moral order as the obligation of the treaty itself. It is asserted that Congress has never failed to so implement a treaty.

"The case cited by Professor Lauterpacht is the famous migratory bird case, *Missouri* v. *Holland* (252 U. S. 416), in which Leviathan, with deep concern for the food supply of wild duck for a suffering people, blithely asserted that there is no limit in the United States to the treaty-making power and legislation enacted thereon unless it is prohibited by the Constitution.

"The problem is aggravated by the recent series of cases in the Supreme Court which deal with the power of Congress to appropriate entire fields of legislation to the exclusion of the States. I leave to your imagination as to what would happen in the field of administration of municipal law if subversive elements should teach minorities that the field of civil rights and laws had been removed to the field of international law, with the consequences outlined by Dr. Jessup, as quoted herein.

"The paucity of discussion of these constitutional features is difficult to understand. Is it possible that discussion would not comport with propaganda?"

To this we would add the observation that even if a treaty adopted the entire Bill of Rights of the United States, consent to and ratification of the treaty would transfer all jurisdiction in civil rights to the Federal field to the exclusion of the States.

From the familiar pen of Harold R. McKinnon the Committee offers this:

The objective of securing human rights throughout the world is a laudable one. Moved by this objective, some are seeking to achieve it immediately by law. It must be remembered, however, that law presupposes a political foundation, which is government. And government presupposes a minimum moral sense, including the recognition of the Divine origin of basic human rights. Without government, law lacks institutional character and is merely conventional; and without sound moral principles, government is but an instrument of force. In place of world government today, we have a federation of independent sovereignties agreeing to agree in the future. And in many areas of the world, the moral foundations, which are expressed in our Declaration of Independence, are lacking. To attempt to secure human rights by a professedly legal framework such as an international court of human rights, without these political and moral prerequisites, is an illusory effort which would set the world backward rather than forward, because it would raise hopes which would never be realized and which would therefore be followed by despair and revolt.

VI. THE COVENANT ON HUMAN RIGHTS

1. Accommodation to Constitution

The last draft of the Covenant is appendix A to this report.

The outstanding problem at this time of the proposed Covenant on Human Rights is that of accommodation of the treaty to the Constitution of the United States.

A careful statement was made by the representative of the United States to this effect:

"Mrs. Roosevelt, as the Representative of the United States, pointed out during the discussion of paragraph 1 of article 2 that in the view of the United States, when the Covenant is signed and ratified the obligations of the Covenant should be carried out by the parties to it through legislative and other measures, existing or to be enacted, giving effect to the provisions of the Covenant, particularly

with regard to articles 5 to 22. She pointed out that under this procedure, these articles of the Covenant should not themselves become operative as domestic law."

In addition, article 24 of the proposed Covenant is offered:

"In the case of a Federal State, the following provisions shall apply:

"(a) With respect to any Articles of this Covenant which the Federal Government regards as appropriate under its constitutional system, in whole or in part, for Federal action, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;

"(b) In respect of articles which the Federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, provinces, or cantons, the Federal Government shall bring such provisions, with favorable recommendation, to the notice of the appropriate authorities of the States, provinces, or cantons at the earliest possible moment."

In our opinion, these proposals do not meet the problem. Can the mere statement in the treaty that its provisions shall not become domestic law prevent the automatic operation of a plain provision of the Constitution of the United States? Bearing in mind that the self-executing provisions of a treaty do become domestic law of the United States, and that the obligation to implement a treaty, as provided therein, is as strong an obligation as the treaty itself, the point is reached, when the necessary legislation has passed, that the treaty is fully self-executing and becomes domestic law of the land by constitutional process. As we shall show, the present draft omits significant provisions of our Bill of Rights. Unless the treaty provisions substantially follow the Bill of Rights of the United States, the treaty as implemented may be of equal dignity with our Bill of Rights (art. 2 (1)). Even if our Bill of Rights is followed or copied exactly, the entire field of civil or human rights is taken from the States and vested in Congress. All State constitutions and State laws are superseded by Federal legislation implementing the treaty. Shall that result be attained other than by amendment of the Constitution by the people of the United States and not by two-thirds of the Senators present at the ratification of a treaty or by an implementing vote of a majority of Congress? That is the problem to be solved in both the Covenant on Human Rights and the Genocide Convention if the treaties are to be ratified. No solution is as yet in sight and in the Genocide Convention no effort has been made to solve it in any way.

Article 24 is defective for three reasons. If by Federal jurisdiction is meant Federal Territory only, the effect of the treaty is so negligible as to be useless, except as to the District of Columbia, for instance. In view of recent events in the District, this may be highly significant. If article 24 means jurisdiction of the Federal Government in a political sense, action by Congress is appropriate and valid under a ratified valid treaty. The option in 24 (b) to refer any matters to the States is defective because the discretion to exercise the option rests in officials of the Government only and the States are helpless. If reference is made, it is useless because the States have no power whatsoever under our Constitution over foreign affairs. New York or California have no power to say that they will not accept certain portions of the human rights treaty. It is all or nothing, and if there is Federal power in that field it is nothing for the States. That is the issue to be faced.

Article 2 (1) provides:

"Each State party hereto undertakes to ensure to all individuals within its jurisdiction the rights defined in this Covenant. Where not already provided by legislative or other measures, each State undertakes, in accordance with its constitutional processes and in accordance with the provisions of this Covenant, to adopt within a reasonable time such legislative or other measures to give effect to the rights defined in this Covenant."

Article 22 (2) provides:

"Nothing in this Covenant may be construed as limiting or derogating from any of the rights and freedoms which may be guaranteed to all under the laws of any contracting State or any conventions to whic hit is a party."

These articles are new in the present draft of the Covenant and careful analysis has not been possible. They would appear to be in conflict. Under article 2 each State undertakes to adopt the rights as defined by the Covenant. By implementing legislation each State undertakes to provide by legislation the rights as defined in the Covenant. Where not already provided in the defined form, legislative changes shall be made to meet such defined form.

Paragraph 22 (2), proposed by Great Britain, preserves existing rights. In the event of conflict of rights, as defined by the Covenant, and existing rights, which

will govern? The provision in the Covenant for trials of accused without restriction as to place, and the Sixth Amendment, guaranteeing the right of trial in the state or district in which the crime was committed, is a case in point. If the provision for trial as defined by the Covenant governs, the door is open to trials of American citizens before international tribunals for crimes committed in this country. If the provision in the Sixth Amendment governs, then the Constitution of the United States remains the supreme law. That this problem is not remote, is indicated by article 14 of the Draft Declaration of the Rights and Duties of States, American Bar Association Journal, August 1949, page 689:

"Every state has the duty to conduct its relations with other states in accordance with international law and with the principles that the sovereignty of each state is subject to the supremacy of international law."

Article 2 (1) and article 22 (2), which indicates a desire to meet the constitutional problems of the United States, at best will be only a partial answer to that. The search must continue.

The Committee makes two proposals for study only as to this problem:

1. That there be included in the Covenant a provision that the Covenant shall not become domestic law by ratification.

2. That the United States Senate adopt these principles for the guidance of the representatives of the United States:

"That no part of the Covenant on Human Rights or the Genocide Convention shall become domestic law of the United States, or of states of the United States, which is prohibited by the Constitution of the United States, which shall change in any way the division of power of federal and state governments, shall enlarge the present constitutional jurisdiction of Congress or detract from the powers of the states of the United S tates."

These are the essential provisions which will determine the legality of a treaty in the United States as they have been stated in substance in decisions of the Supreme Court of the United States. To this we add the carefully drawn statement of Professor Corwin in The Constitution and What It Means Today, page 96:

"The power to make treaties is bestowed upon the United States in general terms and extends to all proper subjects of negotiation between nations. It should be noted, however, that a treaty to which the United States is party is not only an international compact but also 'law of the land', in which latter respect it may not override the higher law of the Constitution. Therefore, it may not change the character of the government which is established by the Constitution nor require an organ of that government to relinquish its constitutional powers. The powers of the States, on the other hand, in contradiction to the right of their peoples to maintain efficient governments for the exercise of those powers, set no limit to the treaty-making power."

We realize the sweeping nature of these proposals; they are designed to meet the admittedly revelutionary proposals of the Covenant on Human Rights and the Genocide Convention.

Earnest and thorough exploration of these problems has been had with representatives of the State Department and students of international law. They have been discussed in our conferences. Canada and other states will have similar constitutional problems.

2. Specific provisions

We recommend to lawyers everywhere most careful study of the various drafts of the International Covenant on Human Rights. In the limits of this report we are able to discuss only a few provisions.

(*a*) The provisions of the fifth and sixth amendments of the United States Constitution are clear and positive as to protections thrown around the accused in criminal prosecutions, in particular in all prosecutions the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

Article 9 of the proposed covenant contains nothing as to the place of trial of the accused. The trial before an international tribunal would satisfy the provisions of that article. In the migratory bird case, *Missouri* v. *Holland*, it is said that there are no constitutional limits to the treaty-making power unless there is a prohibition in the Constitution of the United States. We pose the question, which we believe to require a negative answer, as to whether or not a treaty which does not recognize the right of trial by a citizen of the United States in the State or district in which the crime was committed is

constitutional. This question goes to the heart of any proposal for the establishment of an international court. We pose the question also as to whether or not a treaty granting less than our Bill of Rights, thus denying rights recognized by our Constitution, would be constitutional.

(*b*) Article 2 (1) (a) of the proposed Covenant on Human Rights is this:

"(a) Everyone has the right to liberty of movement and is free to choose his residence within the borders of each State."

We are not arguing the merits of the proposal at this time. That this will conflict with many State laws on the subject and voluntary agreements which have been upheld by the Supreme Court of the United States would seem to be clear. We direct your attention to the extent of the changes involved in our social structure and the amount of internal struggle involved therein. Shall such sweeping changes be the product of amendment of our constitutions, Federal or State, or of treaty law? The Committee on Civil Rights appointed by the President of the United States, has said:

"The Human Rights Commission of the United Nations at present is working on a detailed national bill of rights designed to give more specific meaning to the general principles announced in article 55 of the Charter: If this document is accepted by the United States as a member state, an even stronger base for congressional action under the treaty power may be established." Report of Civil Rights Committee, paragraph 10.

The practical application of all of this is shown by an excerpt from the letter of Whaley-Eaton Service, August 6, 1949, from which we quote:

"The House committee report on the proposed Fair Employment Practice Act declares that it is 'immaterial whether or not the measure could be constitutionally enacted in the absence of an enabling treaty.' It maintains that article 56 of the United Nations Charter (a treaty) absolutely necessitates Federal legislation to achieve the purposes of article 55, purportedly the same as in FEPC.

"Under this construction, a whole series of laws, heretofore considered clearly unconstitutional, could be legally enacted if apparently authorized by a treaty, which is the supreme law of the land. The point heretofore has not been of material importance, but can assume tremendous significance in view of the many international engagements to which the country is already committed or may hereafter commit itself."

The only remedy now for this situation is rejection of treaties dealing with domestic questions, which do not recognize and provide for the constitutional situation of the United States. The problem is not only legalistic but intensely practical, a matter of pending legislation in Congress.

3.

Another very difficult matter, in which the Commission on Human Rights is about evenly divided, involves the enforcement machinery in the implementation of the covenant. The United States is opposed to the right of individual or group petitions against violations and it has consistently supported that position. It has proposed that only states shall have the right to file petitions to a screening and investigating committee without powers to act. India, France, Australia and other states insist that states, groups, or individuals shall have the right to take action in the United Nations or before an international tribunal. That includes the right of a citizen of a state to file a petition against his own state. We have cited the views of Dr. Jessup on the question of individual liability. Officials in this country of a prominent world organization insist at all times on the full rights of the individuals, in spite of the official position of this country. We believe that our officials will welcome aid, advice, and support of American citizens on this vexing problem. It is discussed fully in State Department Bulletin, volume 21, July 11, 1949. The Committee believe that the position of the United States must be maintained.

We have used these three questions, not in an exclusive way, but because we believe that they are illustrative and typical of the questions involved. As no treaty has been signed, we do not deem it necessary to go further in analysis of the proposed draft. We feel that any action on the Covenant would be premature until a completed draft has been presented.

Let us say here that in our opinion lawyers can no longer be indifferent to these searching and pregnant problems. In our conferences we were told over and over again that the participants had no idea of the problems involved in these treaties. That they involve fundamental principles of government is apparent.

VII. THE GENOCIDE CONVENTION

1. Analysis

We have approached the question of whether or not the Convention on the Prevention and Punishment of the Crime of Genocide should be ratified by the United States, with full appreciation that acts which have been perpetrated against human groups, attempted to be defined as crimes against international law in articles II and III of the convention, shock the conscience of mankind, are contrary to moral law, and are abhorrent to all who have a proper and decent regard for the dignity of human beings, regardless of the national, ethnical, racial, or religious group to which they belong.

The Committee is fully conscious of its obligation to be constructive. That has been its work. It realizes fully its influence and power as the representative of this great organization. It realizes its duty to carry out the express purpose of belief in and support of the work of the United Nations. It realizes also that only a strong United States can be really helpful in the world and that a strong United States depends on that which has made its strength possible, its form of government anchored on the Constitution of the United States and the Bill of Rights of its people. This, we are sure, is the spirit in which you would have us approach the problems which we now present.

Destruction of human groups, recently denominated genocide, has heretofore been deemed a matter of domestic concern only, and has not been considered, nor declared, to be "a crime under international law" until the resolution of the General Assembly of the United Nations dated December 11, 1946, which resolution, of course, does not per se constitute international law. (See powers of General Assembly, United Nations Charter, Chapter IV, articles 10 and 11.) "It is this resolution to which the Legal Committee gave full content by providing the General Assembly with a legal instrument designed not only to prevent genocidal acts but also to punish the guilty. (Letter of transmittal of Genocide Convention by the State Department to the President of the United States, appendix D to this report).

By the Genocide Convention or treaty the contracting parties affirm in article I "that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."

Articles II and III of the convention read:

"Article II

"In the present convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

"Article III

"The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide."

Article V obligates the contracting parties to enact the necessary legislation to give effect to the provisions of the convention and to provide effective penalties "for persons guilty of genocide or of any of the other acts enumerated in Article III."

Article VI provides that "persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory in which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

Article VIII provides that "any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United

Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III."

Article IX provides that "disputes between the Contracting Parties relating to the interpretation, application, or fulfillment of the present Convention, * * * shall be submitted to the international Court of Justice at the request of any of the parties to the dispute."

Thus it will be seen that it is proposed by the action of the President, consented to by two-thirds of the Senators present when Senate action is taken, to define certain acts, which have traditionally been regarded as domestic crimes, as international crimes and to obligate the United States to provide for their prevention, suppression, and punishment and for the trial of persons accused thereof either in our domestic courts or in an international tribunal.

To diagnose is often a painful, difficult task. It becomes important, however, to discuss what the Genocide Convention is and what it is not.

The drafters of the convention started with high hopes, which evidently were dissipated as difficulties forced inevitable concessions and compromises.

All—states, responsible public officials, individuals—were to be covered in the international crime of genocide. In the end it is admitted that states cannot be guilty of crimes; that civil liability, sanctions, and force can only be used against states; that certain constitutionally responsible officials, such as rulers who have constitutional immunity from punishment for crimes, as the King of Sweden, the Premier of Russia, and the Politburo, and other rulers, cannot be punished for genocide; and that governments will not surrender their high officers for trial for genocide.

What is said to be left is a code of domestic crimes which the representative of the United States said are already denominated in all countries as common-law crimes. These are made international crimes.

All national, ethnical, racial, religious, and political groups were to be protected against destruction by killing or other methods of destruction. Political groups have been omitted and the other groups must be destroyed "as such." The use of "as such" undoubtedly made it safe for the signing of the convention by the U. S. S. R.

Practically all nations agreed on the necessity of an international penal tribunal if the effort against genocide is to be effective. This means trial in either domestic or international courts, or both. It is left entirely to the future.

The position expressed by the United States representative was that genocide is a matter between states, that it cannot be committed without the complicity of the state. The unassailable position of his country as stated by him was not accepted. Incitement to genocide was made an international crime in spite of repeated objections of the United States representative that it infringed on freedom of speech and freedom of the press.

The above instances and many others which could be cited have been taken directly from the official report of the United Nations Summary Records of the third session of the Ad Hoc Committee and the meetings of the Sixth Committee, September to December 1948. Documentation is readily available for any student of the subject.

The Senate of the United States is now urged to give its consent to the Genocide Convention. The diagnosis is not overdrawn. We quote from the preface of an analysis of the Genocide Convention by Dr. Nehemiah Robinson for the Institute of Jewish Affairs, World Jewish Congress, dated July 1949, and just received:

"There are divergent views on the import of the convention. The Australian Prime Minister, Evatt, described its approval by the General Assembly as an 'epoch-making event.' On the other hand, the British Attorney General, Sir Hartley Shawcross, said that the Assembly should beware of deluding people into thinking that a great step forward had been taken through the adoption of the convention, whereas, in reality, nothing has been changed. The latter point of view was supported by Prof. J. L. Brierly ('the Genocide Convention,' the Listener, London, March 10, 1949); according to him, 'the real danger is if we allow it to go out in the world, as has been done with this convention, that an important advance has been made when in fact nothing important has happened at all'."

"The present commentary strives to provide, in a totally detached way, a clue to the value of the convention, for only on the basis of a detailed study can its importance be properly estimated.

"Professor Brierly's approach is what he calls 'instinctively cautious and empirical.' It is the right and duty of a lawyer to be cautious and empirical, but it serves no good purpose to proclaim in advance, on the basis of such an ap-

proach, the uselessness of the Genocide Convention. It would be much more proper to put it into practice and judge its usefulness on the basis of experience. But for this the convention must first be set in motion, i. e., the necessary number of States must ratify it."

We do not believe that these paragraphs need any comment from the committee to an American lawyer. Government by treaty and by doubtful experiment is the new order of the day.

2. Failure to recognize the constitutional position of the United States

This subject has been discussed generally in the report under the heading of the "Accommodation to the Constitution." For convenience and as emphasis of the importance of the questions we restate the constitutional position of the United States as expressed by Judge Orie L. Phillips in a recent address:

1. The external powers of the United States are to be exercised without regard to State laws or policies.

2. The treaty-making power is not limited by any express provision in the Constitution. It does not authorize what the Constitution forbids and its exercise must not be inconsistent with the nature of our Government and the relation between the States and the United States.

3. The treaty-making power is not subject to the limitations imposed by the Constitution on the power of Congress to enact legislation, and treaties may be made which affect rights under the control of the States.

4. A treaty, entered into in accordance with constitutional requirements, has the force and effect of a legislative enactment and to all intents and purposes is the equivalent of an act of Congress. In addition to being an international contract, if self-executing it becomes municipal law of the United States and of each the States, and the judges of every State are bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. If the treaty provides for implementation by legislation, the duty to enact such legislation is as strong as the treaty itself, and upon implementation the treaty and the legislation become the domestic law.

5. In the event of a conflict between a treaty made in accordance with constitutional requirements and the provisions of a State constitution or a State statute, whether enacted prior or subsequent to the making of the treaty, the treaty will control.

We have referred to the effort in the drafting of the covenant on human rights to recognize the problems which arise in the constitutional system of the United States if a treaty deals with what have always been regarded as domestic questions which have fallen in either the Federal or State systems of laws. No such effort has been made in the Genocide Convention. A code of domestic crimes has been drafted with the obligation on contracting States to adopt such crimes as domestic law as drawn and written to be enforced in domestic courts until an international court shall have been created.

The definitions of crimes of genocide are clearly self-executing and become the law of the land. Endless confusion in the dual system of the United States is evident. The letter of transmittal of the Department of State shows that the same crime may be murder in State law, genocide in the Federal and international fields. Race riots are local crimes and genocide. Lynching may be either, dependent on the intent and extent of participation. To impose a great new body of treaty law which will become the domestic law of the United States is a tremendous change in the structure of the relation of States and the Federal Government under our Constitution, of doubtful constitutionality, as shown by Professor Corwin. To deprive the States of a great field of criminal jurisprudence and place it in the Federal field alone, or under the jurisdiction of an international court, is truly revolutionary, not to be effected without amendment of our Constitution.

The failure of the drafters of the Genocide Convention to recognize the need to meet the constitutional situation of the United States in any way, in our opinion, is a fundamental error and a barrier to ratification of the Convention by the Senate of the United States on this ground alone.

3. Place of trial for citizens of the United States

As particularly applicable to genocide, we repeat that under article III (3) of the Federal Constitution all crimes are triable by jury, and "such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." And in the sixth amendment it is provided

that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

When it is borne in mind that the rights as embodied in the first 10 amendments are a restraint on our Federal Government—rights which every citizen inherently has against the United States and which it does not possess and cannot give away—how can that Government by treaty, or otherwise, delegate the punishment of a crime, which can become such only by act of Congress, to an international tribunal?

In the case of any crime which Congress has defined and for which it has prescribed the punishment, an American citizen is entitled in an American court to all the safeguards set forth in the Constitution.

The State Department says in its letter of transmittal to the President, "Thus the commission in American territory of genocidal acts would be triable only in the American courts. No international tribunal is authorized to try anyone for the crime of genocide. Should such a tribunal be established, Senate advice and consent to the United States ratification of any agreement establishing it would be necessary before such an agreement would be binding on the United States."

The following statement was made by another representative of the United States at the Seventy-fourth meeting of the Sixth Committee of the General Assembly of the United Nations, at Paris, October 14, 1948: "The United States delegation intended, at a later stage, to show the need for the establishment of an appropriate international tribunal." Records of the third session of the General Assembly, part 1, page 103.

The debates of the ad hoc committee and the Sixth Committee show that such a tribunal is regarded as an absolute necessity if genocide is to be punished.

The committee is opposed to subjecting our citizens and other persons within our territorial jurisdiction, to trial, conviction and sentence, for acts of genocide committed in the United States, by an international penal tribunal where they would not be surrounded by the constitutional safeguards and legal rights accorded persons charged with a domestic crime.

There should be no implied approval or commitment for the creation of an international court for trials of American citizens for genocide.

4. Denial of free speech and freedom of the press

Article III (c) of the Genocide Convention provides that "direct and public incitement to commit genocide" shall be a crime. This was adopted in spite of repeated objections of the United States representative that it was a plain infringement of freedom of speech and freedom of the press. Who shall judge if political speeches are incitement to genocide, the civil authorities? The Supreme Court seems to have settled that in the Terminiello case. Who shall judge as to freedom of the press? As prevention of genocide, shall censors be provided by the state? Representatives of many countries insisted that as between genocide and freedom of speech and freedom of the press, the latter must give way. The position of our representative seemed to be incomprehensible to many of them. The representative of the United States boldly said that genocide should stop where freedom of speech begins. He warned the other nations more than once that inclusion of incitement of genocide would present an obstacle to the ratification of the convention by his country.

If the effort to promote human rights in the world is to mean anything, it would seem to be essential that freedom of speech and freedom of the press be preserved and that no treaty, no matter what its purpose, which seeks to deny those rights should be considered by the Senate of the United States.

The cause of human rights will not be advanced in the world by denying those rights in another world treaty.

5. "As such"

The convention defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." The words "as such" were inserted against the advice of the United States and other states. Political groups have been omitted and the named groups must be destroyed as such. It is agreed that "destroy" does not mean "kill." They may be destroyed for any other reason, such as the use of persecution, terror, deportation, or slave labor for those who undermine the

state or are enemies of the state. People are persecuted, tried, and condemned for their religious beliefs under the guise of protecting the state and its ideology against enemies of the state. That is not genocide. The door has been opened, in the opinion of men highly versed in international law, to complete emasculation of the purposes of the convention. Indeed one of them asserted that the words "as such" would probably exclude from the concept of genocide most of the famous massacres and persecutions of history. Congressional Record, July 6, 1947, page A4510. The United States cannot be a party to such hypocrisy.

6. Duty to prevent genocide

Articles II and VIII of the convention leave in doubt as to whether or not the contracting parties "undertake to prevent and to punish" genocide only within their respective jurisdictions or if the firm undertaking is to prevent and punish it throughout the world. This ambiguity should have been resolved in the draft. The committee is aware of the fact that under conventional international law, as it has been understood in the past, the undertaking to prevent would extend only to the jurisdiction of a particular state. But conventional international law is claimed to be a thing of the past and new concepts are asserted with authority. In international law it is the word "undertake" that imputes the most solemn obligation. It is used only once in the Atlantic Pact.

In the note by the secretariat of the United Nations to the Ad Hoc Committee on Genocide (Economic and Social Council Report, April 2, 1948), setting forth the view of the secretariat as to the provisions to be inserted in the proposed Convention on Genocide, this is found:

"*III. The convention will be concerned not only with the punishment of genocide but also with its prevention.*

* * * * * * *

"Prevention may take other forms than penal measures. There may be international prevention of a political nature. That would be the case if it was provided that the States parties to the convention should inform the organs of the United Nations in order that they might prevent the commission of genocide."

What the secretariat of the United Nations meant by the foregoing is shown by article XII of the proposed draft convention prepared by the secretariat.

"*Article XII*

"Irrespective of any provisions in the foregoing articles, should the crimes as defined in this Convention be committed in any part of the world, or should there be serious reasons for suspecting that such crimes have been committed, the High contracting Parties may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes.

"In such case the said Parties shall do everything in their power to give full effect to the intervention of the United Nations."

The Draft Convention prepared by the Ad Hoc Committee of article VIII was this:

"1. A party to this Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide."

There is no mention of punishment.

Article VIII in the present convention provides that "any contracting party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts in article III. Again there is no mention of punishment.

Mr. Marcus, acting director of the political department to the World Jewish Congress, appeared before and submitted a general statement on genocide to the Ad Hoc Committee, and submitted the following as a partial summary of the views of the congress:

"(a) Preventive measures should not be confined solely to parties to the convention, but should be of universal application;

"(b) The convention should include the obligation, for all member states, to take measures to prevent the occurence of genocide before the actual destruction of human groups began;

"(c) The convention should make provision for effective measures compelling States to deliver to the international authority all persons guilty of acts of genocide, regardless of the personal status of such persons;

"(d) The convention should make provision for the reparation of material damage caused by acts of genocide, and for the establishment of an international authority to adjudicate claim in such connection."

The letter of transmittal of the Department of State contains this:

"Thus the heart of the convention is its recognition of the principle that the prevention and punishment of genocide requires international cooperation. However, the convention does not substitute international responsibility for state responsibility. It leaves to states themselves the basic obligation to protect entire human groups in their right to live. On the other hand, it is designed to insure international liability where state responsibility has not been properly discharged."

The question is as to whether or not the affected groups, or their states, shall have the right to demand prevention and suppression of genocide because of the international responsibility of the contracting states. Is this an insurance policy for minorities? In the Treaty of Mutual Assistance and the Atlantic Pact the obligation in the event of aggression is to consult with other parties to the pacts and there is no blanket obligation to prevent aggression. Only in that way was the obligation to go to war without a declaration of war by Congress overcome.

We have shown the careful consideration given to this article VIII before its inclusion in the covenant.

From page 33 of the analysis of the Genocide Convention by the World Jewish Congress we quote:

(*Article VIII*)

"(a) This article may appear to play an important part in the prevention of genocide because it is, in its wording, the only article dealing with actual prevention and suppression of this crime. However, this interpretation is not in accordance with either the Charter of the UN, or the text of the article and the avowed intention of its drafters. It is indicative of the little value which the members of the Sixth Committee attached to this article that it was originally deleted by it on the ground that this article did not comprise anything which was not already contained in the UN Charter because, under the provisions of the Charter, the members were entitled to appeal to organs of the UN in case of need."

Evidently we are to be led to believe that in a convention, which took several years to prepare by lawyers, there was inserted an article, providing for the exercise of wide powers in the prevention and suppression of the acts of genocide, which does not mean anything at all. The convention contains nine enacting articles of which one is meaningless and innocuous. In our opinion, if any further evidence is needed in support of the statements made in this report as to the duty of prevention and suppression of genocide under the treaty, it has now been supplied. A real purpose of the convention is to prevent and suppress genocide in the world and that duty may rest on the ratifying states by action within or without the United Nations.

We assert that if an obligation of the convention is to prevent and suppress genocide wherever it appears in the world, in civil and religious wars, in racial and ideological struggles, and in domestic life of the nations, it should be clearly stated. The United States may have to assume such an unknown obligation but, if so, let the country know it. The situation cannot be denied or glossed over any longer.

7. Definition of crimes by Congress

Articles II and III undertake to define certain acts as international crimes to be made effective in the United States by action of the President, concurred in by the affirmative vote of two-thirds of the Senators present, without concurrent action by the House of Representatives, the body traditionally regarded as closest to the people.

Such acts are declared by the convention to be crimes under international law. If such acts are offenses against the law of nations, article I of the Constitution of the United States provides:

"The Congress shall have power * * *.

"10. To define and punish * * * offenses against the law of nations."

If such acts are to be made offenses against the law of nations, for which our own citizens are to be punishable, they should be declared so by action of the Congress under the above provision of the Constitution.

To undertake to so define them by treaty would be of doubtful constitutional validity and to set out on a course of undertaking to define by treaty what acts

committed within our territorial jurisdiction shall constitute international offenses, and be punished as such, would be an unwise departure.

It is one of our fundamental legal concepts that a legislative body, in the exercise of its power to declare what constitutes a crime, must define it so as to inform persons subject thereto, with reasonable precision, what it intends to prohibit so they may have a certain and understandable rule of conduct and know what it is their duty to avoid.

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to the application, violates the first essential of due process."

The definitions in articles II and III of the convention do not meet that test. For example, what is a part of a national, ethnical, racial, or religious group—one member, two members, how many? The original drafts did not contain the words "in whole or in part." They were inserted at Paris. The difference between destruction of a group or part of a group is pronounced. It brings in many acts which would not be included in the destruction of the whole of a group.

It is conceded that the word "destroy" does not mean "kill." Destruction may be accomplished by other means.

What is destruction of part of a group by "mental harm"? Do many present laws cause such destruction?

If an act was done with intent to destroy a substantial number of members of a group, although actuated by no malice toward the group, as such, would that be genocide?

The defect of precision in definition becomes all the more important when regard is given to the fact that the final power of interpretation of the provisions of the convention may be vested, not in our courts, but in the International Court of Justice by article IX of the convention.

Appendix B, dealing with definitions of crimes of genocide, is taken from the Genocide Convention—Its Origins and Interpretation, by Dr. Nehemiah Robinson.

8. Compulsory reference to World Court

Article IX of the convention provides that disputes between the contracting parties relating to the interpretation, application, or fulfillment of the convention, shall be submitted to the International Court of Justice at the request of any party to the dispute.

Under the Genocide Convention many of the disputes to be submitted to the International Court of Justice will involve matters which by treaty, and not by customary law, have been changed from domestic questions and local law to the field of international law. A State or Federal court may decide that a crime does not constitute genocide, that intent has not been shown, that the crime falls within the local jurisdiction. Is the United States now ready and willing to establish the International Court of Justice as a court of review over its Supreme Court and all lower courts without any limit to such jurisdiction? The position of the United States as expressed by the representative of the United States to the Sixth Committee was that an international court should have jurisdiction only if a state failed to act in accordance with the treaty or if justice had not been done in a state. The proposal of the United States was not accepted.

In such a case the International Court of Justice would be empowered to assess damages by way or reparations against the Government of the United States.

In case our courts continued to refuse to accept the interpretation of the International Court of Justice, the United States might be liable for continuing damages.

Article IX should be eliminated from the treaty because the United States is now obligated by article 36 of the Statute of the International Court of Justice to submit to the jurisdiction of that court all legal disputes concerning:

(*a*) The interpretation of a treaty;

(*b*) Any question of international law;

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The foregoing enumeration embraces all disputes that could be submitted to the International Court of Justice under article IX of the Genocide Treaty. The ratification of that article would have the effect of avoiding the Connally and Vandenberg reservations in the declaration of the United States Government accepting the compulsory jurisdiction of the International Court of Justice under article 36 of the statute.

The Connally reservation, it will be recalled, provides that disputes with regard to matters which are essentially within the domestic jurisdiction of the United States shall be submitted to the Court "as determined by the United States of America." Paragraph 6 of article 36 of the statute provides that "in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

The Vandenberg reservation stipulates that American acceptance of compulsory jurisdiction of the Court shall not apply to "disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction."

It is possible that all parties which ratify or adhere to the convention on genocide might not be parties to declarations accepting the compulsory jurisdiction under article 36 of the Statute of the International Court of Justice; but it would not seem to be incumbent upon the United States to agree to special articles conferring such jurisdiction with nations which have the option of accepting the procedure now prescribed in the statute for that purpose.

The committee does not deem it appropriate at this time to raise the question whether or not these reservations should be continued or repealed. The committee thinks it its duty, however, to inform the house of delegates as to the foregoing effect of article IX of the Convention on Genocide should that convention be ratified by the United States.

Judge Allen, in her Detroit address, urges strongly that there be a determination now of the effect of article 2 (7) of the Charter and the claimed position of United Nations as to its right to make international law. Until there has been a clarification of the power of United Nations to determine international law and the effect of article 2 (7) of the Charter, the committee does not believe that it is advisable that any change be made by the Senate of the United States in regard to compulsory jurisdiction of the International Court of Justice.

The statement of George A. Finch, vice president of the American Society of International Law, and a member of the committee, before the annual meeting of the society in Washington, D. C., on April 29, 1949, is of value on this question:

I shall not attempt to segregate the problems as between the Genocide Convention and the Covenant on Human Rights, because, in my view, both would have in many respects the same effect. * * * We already have in this country a highly developed system for the protection of human rights, sanctified by constitutional provisions and applied and interpreted by our courts—provisions that are based upon the principle that the individual is himself sovereign and possesses inherent human rights without having to ask for them from anyone. In our attempts to reach an international level, we are meeting with different concepts where, for example, rights are granted by governments or where governments are undertaking to guarantee certain so-called rights. We are bound to have a head-on collision betwen these different concepts and approaches in an attempt to reach an international agreement.

The concern of our lawyers is with the situation in this country if and when the proposed international agreements, reached as the result of necessary compromise, become the law of the land by enactment in treaty form. No person in this room can deny that now, except where resident aliens are involved, the subject of human rights is a matter completely within the domestic jurisdiction of the United States Government and the States of the Union. Nor can anyone deny that the minute we make a treaty on the subject we transform the subject matter into one of international concern. Thereafter we would not only have the right to tell other contracting parties what we think of their actions in the matters covered by the treaty, and invoke any prescribed sanctions, but the other contracting parties would have a corresponding right to make similar protests and demands upon us.

Some of the crimes that are described in the Genocide Convention and in the Draft Convention on Human Rights may be ordinary common-law crimes as well as international crimes under those documents. * * * Is the United States Government to place itself in the position where it will be obliged to enter into diplomatic explanations to foreign nations or some international agency in regard to the interpretation and application of the Constitution of the United States whenever an American citizen or his alien friends or fellow travelers may feel in a position to complain that his treatment in the courts of his own country is a denial of human rights?

If these proposals to protect human rights and to prevent genocide had been framed so as not to bring up internal constitutional questions, no one would have heard from the American Bar Association on this subject; but the proposals have

not been framed that way. They have been framed, and I think purposely framed, so as to take American domestic questions out of the sole jurisdiction of American courts and place them under some form of international appellate jurisdiction.

A convention or covenant which can be interpreted to apply to individuals committing ordinary common-law crimes and which may be invoked to raise discussion to an international level every time such a crime is committed by an individual, would cause more friction between peoples and governments than the evil itself now does and would tend to promote war rather than to preserve peace between nations. (Proceedings of the American Society of International Law, Washington, April 29, 1949.)

VIII. RECOMMENDATIONS

The recommendations of the committee are—

1. That the Genocide Convention, as submitted, shall not be ratified by the United States.
2. That copies of this report to the house of delegates be sent to the Secretary of State of the United States, to the Committees on Foreign Affairs of the Senate and House of the United States, and United Nations, for consideration by them.
3. That the Special Committee on Peace and Law through United Nations be continued.

IX. A STUDY FOR ALTERNATIVE ACTION

The committee presents for study and consideration the suggestion of Judge Phillips, one of its members, that acting within its constitutional powers in determining offenses against the law of nations, Congress shall make a firm declaration of its intention to prevent genocide as it is understood in its broad sense in the Federal jurisdiction of the United States, and to provide punishment therefor. We quote Judge Phillips, American Bar Association Journal, August 1949, page 625:

"If genocide and kindred offenses defined in the treaty are in fact international crimes, would not the wise course be to enact domestic legislation under section 8, clause 10, article I of the Constitution of the United States, defining such offenses, and providing for the trial and punishment of persons committing such offenses, in our own domestic courts, where the accused will be guaranteed his constitutional rights and accorded due process under our concept of that phrase? We would thus set our own house in order, would offer the same protection to the accused as one charged with any domestic crime, and would reserve to our own courts the final determination of questions as to the interpretation of the penal statute."

Under this plan it is evident that due regard can be had to the constitutional basis of action of this kind by the United States and the respective powers of the governments in the states can be maintained. Useless controversy in this country will be eliminated at a time when it should not be permitted to occur. It would not be difficult to promote similar action in each State of the United States and to propose legislation to accomplish the objects. Thus the highest standard may be set in the world to be followed by action in other countries. When and if, in the process of time, a world order shall emerge with power and force to execute its law, international action, if necessary, will follow as a matter of course. Cooperation of the nations adopting this course of action and the United Nations may be effected and thus the obligation in the Charter of the United Nations to promote and further human rights may be discharged as the Charter intended.

X. REQUEST FROM SECTION OF INTERNATIONAL AND COMPARATIVE LAW

Upon the request of the section of international and comparative law and the recommendations of the board of governors, the committee agreed to submit the following question formulated by the section for discussion and the ascertainment of opinion in the 1949 regional group conferences:

"Should the American Bar Association recommend to the United Nations that it codify the law relating to crimes against the law of nations and that it take action toward approving permanent machinery for the trial of persons accused of such crimes together with the necessary enforcement procedure?"

In the limited time available at the conferences the questions were submitted for discussion.

As to codification, there was general agreement with the work of the committee of previous years to that end and for the work under way by the International Law Commission.

As to the second question, the opinion varies with the great preponderance against the proposal of the creation of international courts for the trial of citizens of the United States. In addition to the question of the constitutionality of such action as discussed in the report, the general sentiment is expressed in the following statement prepared by the Honorable Frederic M. Miller, former justice of the Supreme Court of Iowa, a member of the committee:

It is a fundamental principle of criminal law that the laws of a state or country in which an offense is committed govern exclusively as to the nature of the offense and the punishment to be given upon conviction thereof; the courts of that state or country have exclusive jurisdiction for the trial of such an offense and the venue is determined by the place where the offense was committed. The authorities, legislative, executive, or judicial, of any state or country other than the one in which the offense was committed can take no action in regard thereto except by way of extradition to surrender the offender to the state whose laws have been violated. Under these rules of law, where one is charged with having committed a public offense in the United States, the courts of the State in which the offense is alleged to have been committed have exclusive jurisdiction of the trial, the laws of that State exclusively apply as to the nature of the offense and the punishment involved and the venue is fixed by the place where the offense is claimed to have occurred. If the offense is in violation of a Federal statute, the Federal statutes alone apply, our Federal courts have exclusive jurisdiction and the venue is fixed in the district where the offense is claimed to have been committed.

Under the foregoing principles of law, anyone accused of a criminal offense in this country can be tried only by the courts that meet the foregoing requirements and if the accused has the full benefit of the constitutional guaranties and the procedure prescribed for the trial of such cases.

The new concept would make many offenses now defined solely by the laws of the several states a matter not of Federal law, but of international law, and contemplates eventually the creation of international courts to try the offenders thereunder. When this concept is realized, the courts of this country, State and Federal, will be ousted of jurisdiction. Jurisdiction will be transferred to an international court. The procedure of the international court will not afford the defendant many of the protections which are now afforded him in our State and Federal courts. The venue will not be limited to the exact locality where the offense is alleged to have taken place in plain violation of the sixth amendment of the Constitution. The expense of transporting witnesses or taking their depositions may in and of itself jeopardize the defense of one accused of committing the offense under international law. America has reason to be proud of its courts and the safeguards which have been established to insure a prompt, fair, and impartial trial of those accused of crime. The safeguards thus established are taken for granted and the fact that they may be lost is realized by very few lawyers. Why should our courts be deprived of jurisdiction to try criminal cases arising in this country; why should those charged with offenses, which are now admittedly matters essentially within the jurisdiction of the several States, be deprived of the safeguards now established for their protection; why should those charged with offenses in this country be subjected to trial by an international tribunal under rules of procedure which deny many safeguards which our courts afford, possibly in a place far removed from the situs of the alleged offense? If this radical departure is to take place, surely there must be some valid reason therefor. The committee is convinced that no sufficient reasons have yet been presented to warrant such radical and revolutionary changes in criminal law and procedure in this country.

Respectfully submitted.

DEANE C. DAVIS,
GEORGE A. FINCH,
HAROLD R. MCKINNON,
FREDERIC M. MILLER,
NATHAN L. MILLER,
ORIE L. PHILLIPS,
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ALFRED J. SCHWEPPE,
FRANK E. HOLMAN,
President, Ex Officio,
CARL B. RIX,
Chairman, Special Committee on Peace and Law through United Nations.

APPENDIX A

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (EXCERPTS)

* * * * * * *

APPENDIX B

"Third, the destruction of the group 'as such' must be intended. The draft of the Ad Hoc Committee specified that the intended destruction must take place 'on grounds of the national or racial origin, religious beliefs or political opinion of its (the group's) members;' in other words, in addition to the intention of destruction, there must also be a specific motive lying in the peculiar character of the group. Thus, the *intention* to destroy a group would not suffice if the motives for it were other than national, racial or religious. for instance, if the destruction was carried out in the conduct of a war, or with the intention of robbery, or for motives of profit, or the like. There was a sharp difference of opinion among the delegates as to the advisability of this restriction. The Venezuelan delegation introduced an amendment aiming at the elimination of the above-quote phrase and substituting for it the words 'as such' in order to avoid the possibility of the culprits claiming that the crime was committed for other reasons than those contained in the group itself and to underscore that the essential element in the intent was the destruction of a group as such."

* * * * * * *

"According to the present wording, the aim need not be the total destruction of the group. Thus, genocide is not characterized by the intent to destroy a whole group but to eliminate portions of the population marked by their racial, religious, national or ethnic features. The definition of a 'group' as an assemblage of persons regarded as a unit because of their comparative segregation from others would leave open the question whether the aim must be the destruction of the group in the whole of a country, in a part of it, in a single town, etc. The addition to the phrase 'in part' undoubtedly indicates that Genocide is committed when homicides are done with a connecting aim, i.e. directed against persons with specific characteristics. Therefore, the intent to destroy a multitude of persons of the same group must be classified as Genocide even if these persons constitute only part of a group either within a country or within a region or within a single community, provided the number is substantial because the aim of the Convention is to deal with action against large numbers, not individuals even if they happen to possess the same characteristics. It will be up to the court to decide in every case whether such intent existed.

"(c) The five acts enumerated in Art. II raise a number of difficulties of interpretation. The act of 'killing' (subpar. (i)) is too clear to evoke divergencies of opinion as to its meaning, but what is 'serious' harm is already a matter of interpretation to be decided in each instance on the basis of the intent and the possibility of implementing this intent by the harm done. The same is true of subpar. (c) : it is impossible to enumerate in advance the 'conditions of life' coming under the prohibition of Art. II; the intent and probability of the final aim alone will determine in each case whether an act of Genocide has been committed or not. An instance coming under subpar. (c) would be the putting of a group of people on a regimen of insufficient food allocation, reducing required medical attention, providing insufficient living accommodations, etc.—provided these restrictions are imposed with the intent to destroy the group. Subpar. (d) may in practice give rise to the problem whether the intention must be to prevent all *births* within the group or it is sufficient that it relates to *some* births only. Although his subpar. speaks not of restriction but prevention, it must be admitted that the intent of partial prevention suffices since the requirement of total prevention would conflict with the definition of Genocide as relating not only to a whole group but also to a part of it.

"The measure imposed need not to be the classic action of sterilization; separation of the sexes, prohibition of marriages and the like may achieve the same results. As stated above, the factual extent of prevention should be of no import once it is established that it was imposed on members of any of the protected groups only. This applies also to subpar. (e)."

APPENDIX C

EXCERPTS FROM THE CONSTITUTION OF THE UNITED STATES

ARTICLE I, SECTION 8

"The Congress shall have Power * * *
"10. To define and punish * * * Offenses against the law of Nations."

ARTICLE II, SECTION 2

"*President may, with concurrence of Senate, make treaties, appoint ambassadors, etc.* * * * He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur."

ARTICLE III, SECTION 2

"*Jurisdiction of Federal courts.*—1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; * * * and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

ARTICLE VI

"*Constitution, laws and treaties of the United States to be supreme.*—2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

AMENDMENTS TO THE CONSTITUTION

FIFTH AMENDMENT

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

SIXTH AMENDMENT

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and causes of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

[From the Congressional Record, July 26, 1949]

HUMAN RIGHTS AND INTERNATIONAL LAW

ADDRESS BY MR. CARL B. RIX AT THE ANNUAL METING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW HELD IN WASHINGTON ON APRIL 29, 1949

Human rights and international law as a composite until recently was a nonexistent problem. In An International Bill of the Rights of Man, page 5, Prof. H. Lauterpacht says:

"In fact, the individual became only to an imperfect degree the object of the law of nations. Treaties of a humanitarian character were concluded for protecting the individual in some specific spheres, but the fundamental claims of human personality to equality, liberty, and freedom against the arbitrary will

of the state remained outside the orbit of international law save for the precarious and controversial principle of humanitarian intervention."

In the April 1949 issue of the American Bar Association Journal, page 358, Mr. Moses Moskowitz says:

"There is no such thing as recognized human rights in international common law. The idea of affording international protection of certain human rights and freedoms can be realized only within the framework of treaty provisions establishing the rights to be placed under international protection, defining their content, litigations, and prohibitions."

International law, by treaty or otherwise, is not made in the twinkling of an eye or by the demands and ideas of the few. Sufficient time for seasoning and practice has always been a fundamental of international law. Aspirations and alleged necessities for social changes, no matter how meritorious, do not justify tremendous revolutionary changes in a slowly developing structure like that of international law. A heavy burden of proof rests on proponents of those changes, admittedly not to be secured by an evolutionary process of building customary law but by the summary process of contract or treaty law, the purpose of which is to create a code of conduct of individuals and nations for more than a billion of the people of the world of diverse languages, concepts of government, and standards of living.

In this country we had a significant experience with a noble experiment which ended in ignoble failure due to impossibility of enforcement and change of public sentiment. Emotional actions and resulting propaganda must be analyzed and weighed. What changes in existing structures will be effected? It isn't enough to say that there must be a law and then all will be well. Who says it and why, on what authority and experience? Who is to administer this new body of treaty law, what methods of enforcement will be available, what trials for offenders, individual or state? Dr. Jessup, in his book "A Modern Law of Nations," page 186, discusses intervention in civil wars and internal matters and cautions "that international interference in such matters may lead to undesirable domination of the internal situation in a state and be productive of more international friction than it eliminates."

There is a surge throughout the world for freedom of men as individuals, for assurances of such freedom from their governments, of assurances of minorities that great programs of destruction shall not be repeated anywhere in the world, that common action hereafter shall not be wanting in prevention and stopping such things in their tracks. The peoples of many countries, through the treaty of mutual assistance and now the Atlantic Pact, are united in common defense of the gains in self-government they have made. They unite in defense against a system of government which is determined to spread its tentacles of enslavement of freedom of thought and action, against the machinations of 13 men running a government of tyranny and deceit to spread their power over the world. The way of the aggressor will be hard. When the question was asked of American lawyers if they were ready to proscribe aggression in the world, the answer was not expected so soon.

At the same time, in firm belief that the freedom of man cannot be destroyed, many nations of the world move forward on a tremendous campaign for peace in a harassed world, for things of the spirit, for supremacy of the mind of man, for the right of the individual to live his own life. They move forward in a desire of those who have been favored to help those who have not, to exchange of ways and means to higher and better standards of living everywhere. It is always hard to understand altruism but, there it is, creating problems of accommodation with the practical. We come to you as representatives of a great association of men devoting their lives to problems of government and justice, of individual rights, in a spirit of accommodation, if possible, of the conflicts of action to be solved, and solved they must be. As a great leader in the slow, imperfect task of human freedom, this country, as the possessor of a constitutional Bill of Rights, is asked and looked to for assumption of leadership.

In cooperating with this task, problems arise for the people of this country. How can their constitutional structure, their Bill of Rights, be fitted into the developing international picture of human rights without destruction of a cherished system of our division of powers of government, of our ideals and practical necessities? This is the task to which the American Bar Association has set itself and is the reason why we, the common garden variety of American lawyers, come to you—experts in international law.

Among many other questions, we present these for discussion:

1. What will be the probable result of the induction into international law of the general principles of individual responsibility for international law?
2. What is the effect of treaty law as domestic law of the land, as supreme law under the Constitution?
3. Is there no limit to the power of Congress acting under a treaty except that of prohibition in the Constitution?
4. Shall the treaty-making power be used as the basis for enactment of domestic legislation in the United States?
5. What is the effect of provisions in the Charter of the United Nations as to human rights, as a surrender of the provision of article 2 (7), the reservation of jurisdiction as to domestic questions? What will be the effect as to surrender of domestic questions if the Genocide Treaty and a Human Rights Treaty are ratified?
6. Shall the American people, with their guaranties of protection in the trials of individuals not present in other countries, agree to extradition and trials of Americans before foreign or international tribunals for violations of international law?
7. What means are available to fit our structure into the international picture without destruction of our basic principles?

We are not now ready to supply the answers to these questions. We believe that the American people should be fully advised on these matters; that if you, with your knowledge of international and constitutional law, cannot supply the answers, all of us shall devote unremitting time and toil to their solution. We are gratified that the campaign of the American Bar Association to this end, through Judge Ransom and President Holman, is bearing fruit and that sufficient time will be available for full and complete discussion and study.

In the meantime, those questions and others are taken to the lawyers of this country and Canada in a series of conferences of which 12 out of 20 projected in this country have been held. Much of value has been learned, much study by individuals and groups is now under way.

We have before us one signed treaty, that of genocide, to be submitted for ratification. A great treaty on human rights is in process of drafting and we have for study the preliminary drafts of the commission on human rights.

Now, in the limited time available to me, for a quick look at the problems.

I

What will be the probable result of the induction into international law of the general principles of individual responsibility for international law?

Traditional international law is the law of states and their relations to each other, with all enforcement and negotiations in the states alone. Hamilton put it, "The law of sovereign and sovereign." Now there is another concept of individual liability in international law which already appears in four fields:

1. Offenses against the laws of war and other war crimes.
2. The Genocide Treaty.
3. The human rights covenant.
4. The Habana Charter.

Brig. Gen. Telford Taylor has said, in An Outline of the Research and Publication Possibilities of the War Crimes Trials, on page 2:

"International penal law—a mere embryo a few decades ago—has developed with phenomenal rapidity. * * * Almost overnight, international penal law has become a living reality."

Again he says, on page 11:

"The war crimes trials, at least in western Europe, have been held on the basis that the law applied and enforced in these trials is international law of general application which everyone in the world is legally bound to observe. On no other basis can the trials be regarded as judicial proceedings, as distinguished from political inquisitions. On any other basis, the trials will become a sorry reproach to those who sponsored them, and will surely have a damaging rather than a beneficent effect in Germany. No task which confronts international lawyers and statesmen today is more important than that of solving the numerous and difficult problems which surround the project of making international law a hard reality throughout the world."

Article IV of the Genocide Treaty provides:

"Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals."

The human-rights covenant is predicated on individual responsibility and will present acute problems in a much wider form. The matter of individual right of petition and responsibility under the covenant has already had lively discussion in the Commission: The problem was sidetracked until the declaration was approved. It will break forth with renewed vigor. The United States, China, and other states propose references of disputes to a committee for opinion and conciliation at the request of states only, thus approving the traditional practice. India asked instantly for the right of petition and inclusion of liability and rights of individuals. France did the same in the memorandum of Dr. Cassin. In that is a suggestion of an attorney general for the United Nations for investigation and prosecution of complaints. Australia presented a plan and a charter of a World Court of Human Rights.

My own study convinces me that the foregoing statements are substantially correct. I cannot believe that individual responsibilities and liabilities do not create correlative rights and privileges—in the instant matter to an utterly unknown degree and extent.

II

The full impact of the proposed treaties of genocide and human rights in the United States is revealed in the next question: What is the effect of treaty law as domestic law of the land, as supreme law under the Constitution?

In your discussions at the meeting last year of the effect of customary international law as domestic law, Dr. Hyde referred several times to the question of treaties as domestic law under the Constitution of the United States, but the subject was not pursued. It took an English lawyer, Professor Lauterpacht, to make clear to us anew our constitutional position in these words (p. 179):

"The distinction between 'domestic law' and 'constitution' is deliberate. As to the first, it is clear that in the absence of a special enactment or declaration by the National Legislature, the Bill of Rights, even when ratified, would not, in most countries, necessarily become part of the municipal law of states ratifying it. In the United States, article VI (2) of the Constitution provides that all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

The United States, it will be noted, is for individual liability in genocide and for the traditional state liability and rights in human rights. Where do we go from here?

We speak of individual liabilities only—are there correlative individual rights? Again I quote Dr. Jessup, page 137, who has definite views:

"With the acknowledgment of the individual as a person of international law, it will no longer be necessary to speak solely in terms of rights of states when dealing with privileges and rights conferred by commercial treaties and other treaties dealing with economic and social rights. States may still conclude treaties on behalf of their nationals; they may be, so to speak, convenient instruments for collective bargaining. The state may retain its own right to proceed against another state in case of a treaty breach, but the individual citizen may likewise have his own procedures for vindication of his own rights. Thus the infringement of a trade-mark or patent under the protection of an international convention may be the basis for a cause of action in an appropriate forum by the individual possessor of the right, which he would derive immediately from the convention and not mediately through some national law passed for the implementation of the treaty. Procedurally speaking, it may prove advantageous to have suits instituted first in national courts, but there might be subsequent review by an international tribunal, as already discussed in claims cases. Likewise the individual, black or white, would have a cause of action in case he or she were the victim of a breach of an international slavery convention. More prosaically, the individual businessman, air line, or steamship company, would not have to wait on the slow wheels of diplomacy to secure damages for a violation of rights under a bipartite treaty of commerce or a multi-partite convention concerning commerce and navigation."

In a Progress Report on Human Rights, Department of State Bulletin, August 8, 1948, by James Pomeroy Hendrick, legal adviser to the chairman of the Commission on Human Rights, we find:

"If the covenant is to attain widespread adherence, it is essential that its provisions should not interfere unduly with the domestic jurisdiction of member

states. The theory of the covenant in itself is revolutionary; an undertaking by international treaty to insure certain rights which have traditionally been regarded as being solely of national concern. * * * To allow an individual to appeal from a decision of his country's last resort is a serious step: yet this might be the consequence of recognizing the right of individual petition."

"To that article the courts of the United States have given a generous interpretation, amounting occasionally to an attribution to a treaty of an effect dangerously approaching that of a constitutional amendment. But in other countries a duly ratified treaty is not part of municipal law until it has been made so by an express act of the national legislature. In Great Britain treaties affecting private rights—and these include practically all treaties—do not become the law of the land unless they have been made so by a special act of Parliament."

Since the above was written in 1944, to a limited degree the same effect is had in France. Involved herein is the difficult question of a treaty which is self-executing in whole or in part. The mere fact of the necessity of implementation by legislation, such as the definition of crimes under international law and fixing penalties, does not make a treaty non-self-executing. It seems to be plain that the essential portions of the genocide treaty and the proposed human rights treaty are self-executing, in spite of the note of the drafters of the latter to the contrary. Only clear intent in the treaty itself can prevent the automatic operation of the Constitution of the United States. Thus there may be created, as law, a third body of treaty law in this country with no constitutional basis whatsoever, of equal dignity with our Constitution, as supreme law of the land, superseding all State constitutions, decisions, and laws of the States covering the same subjects, and probably superior to all prior enacted laws of Congress on the subject. Of course, it is no answer that subsequently enacted laws by Congress may abrogate or terminate a treaty. This country is not in the habit of ratifying treaties with the intention of repudiation. The effect in this country of a ratified treaty of human rights and, in a limited degree, the genocide treaty, in a field which has been almost exclusive in the States, is so far-reaching ing in its consequence that the word revolutionary is not fully descriptive. Again, it is no answer to say that the treaty is non-self-executing. Under international law the duty to implement a treaty fully and completely is of the same high moral order as the obligation of the treaty itself. It is asserted that Congress has never failed to so implement a treaty.

The case cited by Professor Lauterpacht is the famous migratory bird case, *Missouri* v. *Holland* (252 U. S. 416), in which Leviathan, with deep concern for the food supply of wild duck for a suffering people, blithely asserted that there is no limit in the United States to the treaty-making power and legislation enacted thereon unless it is prohibited by the Constitution.

The problem is aggravated by the recent series of cases in the Supreme Court which deal with the power of Congress to appropriate entire fields of legislation to the exclusion of the States. I leave to your imagination as to what would happen in the field of administration of municipal law if subversive elements should teach minorities that the field of civil rights and laws had been removed to the field of international law, with the consequences outlined by Dr. Jessup, as quoted herein.

The paucity of discussion of these constitutional features is difficult to understand. Is it possible that discussion would not comport with propaganda?

III

Is there no limit to the power of Congress acting under a treaty except that of prohibition in the Constitution?

This subject was discussed fully at the annual meeting of the society in 1929. In spite of the sweeping statements in *Missouri* v. *Holland*, there is highly respectable authority that there are sharply defined limits.

Illustrative are these cases: *U. S.* v. *Pink* (315 U. S. 203); *Asakura* v. *Seattle* (265 U. S. 332); *Holden* v. *Joy* (84 U. S. 211); *Gregory* v. *Riggs* (133 U. S. 258); *U. S.* v. *Belmont* (301 U. S. 324).

No treaty has ever been held unconstitutional in any court, Federal or State, in the United States.

In the 1929 meeting Chief Justice Hughes, in closing the discussion, said in part:

"So I come back to the suggestion I made at the start, that this is a sovereign nation; from my point of view the Nation has the power to make any agreement whatever in a constitutional manner that relates to the conduct of our interna-

tional relations, unless there can be found some express prohibition in the Constitution, and I am not aware of any which would in any way detract from the power as I have defined it in connection with our relations with other governments. But if we attempted to use the treaty-making power to deal with matters which did not pertain to our external relations but to control maters which normally and appropriately were within the local jurisdictions of the States, then I again say there might be ground for implying a limitation upon the treaty-making power that it is intended for the purpose of having treaties made relating to foreign affairs and not to make laws for the people of the United States in their internal concerns through the exercise of the asserted treaty-making power."

IV

Shall the treaty-making power be used as the basis for enactment of domestic legislation in the United States?

It would seem that the wise words of Chief Justice Hughes just given would be sufficient answer to this question.

From part 10 of the report of the Committee on Civil Rights, appointed by the President, comes this sinister and cynical suggestion following a full discussion of the restricted limits of Federal power of legislation in the field of civil rights:

"10. Power derived from the treaty clause in article II, section 2 of the Constitution, to protect civil rights which acquire a treaty status.

"In its decision in *Missouri* v. *Holland* in 1920, the Supreme Court ruled that Congress may enact statutes to carry out treaty obligations, even where, in the absence of a treaty, it has no other power to pass such a statute. This doctrine has an obvious importance as a possible basis for civil-rights legislation."

This is the report the President advised us to read as a bedtime story. The road to Federal absolutism is being made very, very easy.

V

What is the effect of provisions in the Chapter of the United Nations as to human rights, as a surrender of the provisions of article 2 (7), the reservation of jurisdiction as to domestic questions? What will be the effect as to surrender of domestic questions if the genocide treaty and a human rights treaty are ratified?

The necessity for extreme care and skill in drafting a treaty is shown by the construction and interpretation of the language used in the Charter of the United Nations as to human rights.

It will be assumed that you are entirely familiar with articles 1–3, 55, 56, and 62 of the Charter, which refer to human rights.

Note how carefully those provisions call for promoting, assisting, encouraging, recommending, the cause of human rights, without the creation of any contractual liability for recognition of human rights by any state.

But, as we have been reminded by high judicial authority, plain words do not always mean what they say. The reservation of domestic questions, known as article 2 (7), is perfectly plain and concise. Certain it is that when the charter was ratified by the United States and other countries, full force and effect was given to that reservation of domestic questions. Full assurances on that point were given to the Senate of the United States and the people of this country by the Secretary of State and the President.

It may be of interest to know that in the 1947 meeting of the International Law Association at Prague, a resolution was adopted to set up committees for studying and reporting to the next conference on the legal effects of the Charter in relation to article 2 (7). A distinguished committee, headed by Lord Porter, was set up with Professor Lauterpacht as rapporteur. The report to the human rights committee of the International Law Association at the Brussels (1948) conference is now available for study, and to a layman in this field it is of startling import. Distinguished scholars from all parts of the world sent their comments and observations. A substantial majority of the members of the committee who sent in their comments and observations expressed general agreement with the preliminary report. Comment is made that Dr. Jessup sent a personal note showing on which points the preliminary report differs from the official attitude of the United States. Professor Eagleton expressed a view different from that propounded in the report with regard to the nature of the provisions of the Charter of the United Nations in the matter of human rights and fundamental freedoms. In his view the relevant provisions of the Charter do not

impose upon the members of the United Nations the legal obligation to respect human rights and fundamental freedoms.

Now for some of the surprising conclusions.

"The provisions of the Charter in the matter of human rights and fundamental freedoms express legal obligations binding upon the individual members of the United Nations" (p. 9).

"As a matter of wider principle, it is probably legitimate to assert that the duty of the state to promote the observance of and respect for human rights extends to the obligation to prevent such denial, from whomsoever emanating, of human rights and fundamental freedoms" (p. 21).

The report then passes to the position of the individual under the Charter:

"Finally, one of the results of the provisions of the Charter in the matter of human rights and fundamental freedoms is to effect a far-reaching change in the position of the individual in international law. * * * They transfer the inalienable and natural rights of the individual from the venerable but controversial orbit of the law of nature to the province of positive law, of international law" (p. 22).

Having reached these conclusions as to the binding effect of the provisions as to human rights in the Charter and the position of the individual under it, the report at length argues against the declaration and a covenant as retrogressive steps because the favorable situation under the Charter will be greatly weakened.

As to the difficulties of draftsmanship this is said:

"Any attempt to draft them in the hurried atmosphere of conferences, through a procedure of voting and rapid adoption or elimination of proposals made there, must result in instruments the clauses of which will be often prolix, deficient in form and substance, and lacking in organic unity. * * * The task of drafting an international bill of rights is confronted with all the difficulties which beset the formulation of the most intricate clauses of the constitution of a State, namely, those in the sphere of determining the fundamental rights and duties of the individual and his relation to the State. On the international plane these difficulties are considerably greater" (pp. 40 and 41).

Then follows this discussion:

"Undoubtedly after months of arduous work, such as the Commission on Human Rights has devoted to the subject, there is a tendency, natural in the circumstances, to adopt an instrument showing some results of the prolonged effort. Any such tendency, which may be the product not of conviction but of fatigue, must be resisted. * * * To attempt, in the political and psychological atmosphere of international relations following upon the Second World War, to give final shape to a fundamental and historic instrument the essence of which must be some distinct measure of surrender of exclusive rights of sovereignty, may mean serious and irreparable injury to the cause of human rights. This is a case in which delay may be preferable to fostering the illusion of achievement" (p. 55).

If these comments are compared with the demands for immediate action expressed by Mr. Moskowitz in the American Bar Association Journal, and the reply of President Holman, it must be apparent that repeated demand of the House of Delegates, on the advice of President Holman and Judge Ransom for sufficient time in the preparation of the covenant and its study by the citizens of this country, are completely justified.

Then follows a still more remarkable position:

"The United States was to a large extent responsible for the idea of a declaration which is neither binding nor enforceable and which is to be accompanied or followed by a binding convention—provided there is a sufficient number of states ready to accept it. The United States has opposed what must be regarded as an indispensable feature of an effective protection of human rights, namely, the recognition of the right of petition by private individuals and groups. * * * The historic part which the United States, since the Declaration of Independence and its own Bill of Rights, has played in promoting human freedoms, as wall as its rapidly increasing part in international cooperation, permit the expectation that that country may yet make a decisive contribution to an effective international protection of the rights of man. In the meantime it is preferable to leave to the forces of democracy in that country the opportunity to vindicate fully through the slower processes of eductaion and persuasion the idealistic and libertarian tradition of its people in relation to human rights" (p. 56).

In an editorial in the Journal of the Association, Judge Hudson paid his respects to the contention that positive law as to human rights was created by the Charter in spite of article 2 (7):

"It is difficult to conceive of the possibility of making substantial progress in the development of international law unless a scrupulous respect obtains for the integrity of international instruments. Yet a tendency now seems to prevail in some quarters to undermine that respect by torturing the meaning of great international instruments and by forcing them to serve purposes for which they were never designed, purposes at variance with the desires entertained by Governments when the instruments were brought into force.

"The usefulness of the Charter of the United Nations should not be misconceived. The Organization will endure only if its provisions are respected. A frame for a picture must not be mistaken for the picture itself, and the United Nations may need to be protected against some of its more ardent friends.

"When reforms cannot be achieved through agencies of local government, it is often a temptation to seek to have them ordained from above and afar. Problems take on an illusory guise of simplicity if the forum of their consideration can be shifted to a distant state or national capital. And a failure there easily begets a further temptation to seek their solution by international action. Perhaps such progression is not to be condemned, but it should not be permitted to place strains on existing international legislation.

"If governments cannot have confidence that the instruments by which they bind themselves will not be made to serve unintended purposes, if respect is not paid to the terms and tenor of the obligations imposed by such instruments, the result may be a reluctance to assume further commitments and the progressive development of international law may be seriously retarded. An important function of the United Nations might thus be frustrated." (The American Journal of International Law, vol. 42, No. 1, pp. 105, 107, 108.)

VI

Shall the American people, with their guaranties of protection in the trials of individuals not present in other countries, agree to extradition and trials of Americans before foreign or international tribunals for violations of international law?

With the possible exception of divided opinion as to prosecution and trial for war crimes, our experience in the 12 conferences with lawyers in various States furnishes an emphatic "no" to this question. It is said by lawyers participating in the war trials that there were many privileges of the accused in criminal trials under our system which were not present in those trials. Add to that the problems of extradition, language, procedure, and cost of defense, and it is easy to see why American lawyers should be of decided opinions on the subject. The difficulty in securing approval of the United States for the World Court may point the way for our representatives in the United Nations on considering proposals for other international tribunals.

Judge Orie L. Phillips phrased this question in connection with the Genocide Treaty thus:

"With respect to article VI, in the event we ratify the convention, should we, by reservation, expressly provide that citizens of the United States and persons within the Territorial jurisdiction of the United States, charged with genocide, will be subject to trial and sentence only by a competent judicial tribunal of and sitting within the United States, vested with jurisdiction over such offense by Federal legislation; that a citizen or other person so charged shall be presumed to be innocent until his guilt has been established by lawful evidence beyond a reasonable doubt; that a citizen or other person so charged shall be protected by all the safeguards embraced within the Constitution of the United States, including the rights guaranteed by the fourth, fifth, sixth, and eighth amendments to the Constitution of the United States, to an accused charged with a domestic crime; and that such citizen or other person shall not be subject to be charged, tried, or sentenced by any international penal tribunal?"

VII

What means are available to fit our structure into the international picture without destruction of our basic principles?

Must we have a constitutional amendment to put the United States on a parity with other nations on the effect of treaties as domestic laws? If, from the many fields of effort of the United Nations more treaties covering domestic questions are offered, such action may become absolutely necessary. If not, the Senate of the United States may be obliged to refuse ratification.

The reservation route did not work in the case of the League of Nations. The subject must be explored and it must be understood by the people that reservations may be necessary in order to secure adjustment of the covenant of human rights and other treaties to our Constitution.

Sympathetic advice and counsel, based on careful continuing study of the subject and the work of the Commission on Human Rights, is called for. The American Bar Association will continue to function in this way, broadening its work as more citizens become familiar with international law. Education and more education is the order of the day.

By trial and error the United Nations will find its way and gradually its successes will be greater than its inevitable failures.

If it is thought that the difficulties have been overemphasized in this address, let me remind you that only if the tremendous size of the job is understood can any progress be made. It is no time for orations and emotions on human rights, for propaganda and recitals of wrongs and hardships. Professor Lauterpacht, one of the greatest scholars of the subject of human rights, devotes four pages of his book to a recital of the difficulties and the problems to be faced. He then makes these statements:

"Yet, when all has been said, the fact remains that any attempt to translate the idea of an international bill of the rights of man into a working rule of law is fraught with difficulties which disturb orthodox thought to the point of utter discouragement" (p. 9).

This, from his book, may be the lesson for all of us:

"In view of all these difficulties, it may be felt that indulgence in the idea of an international bill of the rights of man is a regrettable dispersion of effort, of the futility and utter impracticability of which the student of law and politics ought to warn both governments and public opinion at large. It may be his business to do so. At the same time, however, it is his duty to assist in uncovering the hidden springs and the enduring core of the matter—a matter which is the abiding theme of political and legal thought throughout the ages. It is possible that in the contemplation of the continuity of ideas and aspirations on the subject we may find assistance in approaching the solution of that persistent problem of law and government" (p. 15).

Synopsis of Address on Human Rights

(By Carl B. Rix, at an annual meeting of Law Society of Massachusetts, on January 5, 1950)

The traditional concept of international law was that of the relation of states to each other, as Hamilton put it, the relation of sovereign to sovereign. A determined effort is now being made, following the Nurnberg trials, to change that concept to the relations of states and individuals in the states, thereby imposing individual liability for international law and creating unknown individual rights. The concept has been broadened also in the language of the subjects to be covered. For instance, human rights have never been considered to be international in scope. Dr. George Malik, Minister of Lebanon in the United States, and Rapporteur of the Human Rights Commission, and Mrs. Roosevelt recently issued a bulletin on the Covenant of Human Rights in which Dr. Malik says:

"These rights and freedoms have hitherto fallen exclusively within the domestic jurisdiction of the separate states but the covenant will have the effect of lifting them from being the independent and exclusive concern of the separate sovereign states to being the common concern under international law of all the covenanting states."

This means that if domestic questions are made the subject of a treaty they thereby become part of the structure of international law. If to that is added the theory of individual liability instead of liability only of a state, it is easy to see the extent of the damage which will come to us and other nations.

Article 27 of the Charter of the United Nations provides:

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter."

In order to get away from this provision and to deal with domestic questions, it has been found necessary to change those questions to international law by the use of treaties. A considerable number of treaties of that kind have been proposed and are now under preparation in the United Nations.

This situation has made it necessary that we go back to the Constitution of the United States to discover the impact of the new doctrine on us. Article VI of the Constitution provides:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Few countries of the world have similar provisions in their constitutions and it may be said that the United States occupies an isolated status and the way has never been found by which we can be put on an equal basis with Great Britain and many other countries in treaty law.

The situation of the United States may be summarized thus:

(*a*) In a treaty in a code form, the Senate by a two-thirds vote of the Senators present and approved by the President, may impose domestic law on the United States in any form and on any subject if there is no prohibition in the Constitution, regardless of the entire lack of any other constitutional basis.

(*b*) After ratification of a treaty and approval by the President in a skeleton or enacting form only, which does or does not provide for implementation, Congress has the power with no other constitutional basis whatsoever to pass any implementing legislation, with the approval of the President.

(*c*) The effect of the above is that a ratified treaty confers full and complete power on the Federal Government in matters dealt with by the treaty and the States are deprived of all the power in those matters notwithstanding State constitutions, State decision, and laws.

This is a policy question which must be discussed. If there is to be a succession of treaties from the United Nations dealing with domestic questions, are we ready to surrender the powers of the States over such matters to the Federal Government? Is that the road to peace, domestic or foreign? We hear much of the dominant Federalist State. Everything done so far has been done under the constitutional power of Congress. If no constitutional basis is necessary, and if all that is necessary is a ratified treaty, shall we make that change in our structure of government by the treaty route instead of a constitutional amendment approved by the people of the United States?

The report of the Civil Rights Committee appointed by the President, after considering the division of power over civil rights between the Federal Government and the States, in two places refers to the added power which may be given to Congress in the field of civil rights if the human rights treaty is ratified and approved.

Last year a bill emanated from the Labor Committee of the House dealing with the entire field of civil rights. It is predicated on the provisions of the Charter of the United Nations dealing with the promotion and support of human rights generally. The report of the Labor Committee says boldly that no other constitutional basis is necessary than the Charter of the United Nations, which is a treaty.

These are constitutional processes in the United States. Is there a blind spot in the Constitution? At the time it was drawn, and for years thereafter, operations were under a narrower concept of international law. The result could not have been foreseen. It has been brought to the fore by the proposed Covenant on Human Rights, the Genocide Convention, and the proposed treaty on traffic in persons. During the annual meeting of the American Bar Association in consideration of these matters, Governor Stassen joined in a suggestion of the Committee on Peace and Law through United Nations that if the United States was called upon to consider and ratify many proposed treaties flowing from the United Nations dealing with domestic questions, a constitutional amendment would undoubtedly be necessary to put us on a parity with other nations and to preserve the rights of the States.

There is one outstanding case in the United States by which a domestic question was turned into international law. Congress passed a migratory bird

law which was declared unconstitutional because of lack of constitutional power in Congress to deal with that subject. On the advice of counsel no further action was taken until a treaty covering migratory birds was made with Great Britain and Canada. The matter then reached the Supreme Court of the United States in what is now known as the Migratory Bird case, and the power of Congress to enact the law under the treaty, with no other constitutional basis, was upheld because, as Justice Holmes said, there was no prohibition in the Constitution against it and nothing in the tenth amendment to prevent it. A comparatively simple subject made a lot of law for the United States, the effect of which we must now consider.

It will be seen that the Committee on Peace and Law through United Nations is presenting nothing new. It is presenting a situation under our Constitution which has existed since it was drawn. Many attempts are now being made to recognize the situation. The report of the Committee on Peace and Law through United Nations presented in September at the annual meeting of the American Bar Association has been sent to each member of the association for earnest study and consideration. It is in the hands of Senators and Members of the House. Its substance has been presented to the American Society of International Law and to teachers of constitutional and international law at the meeting of the Association of American Law Schools.

At the last meeting of the Assembly of the United Nations a report of Committee Three was submitted constituting a convention on the traffic in persons, generally known as the treaty on prostitution. In her daily column Mrs. Roosevelt said:

"The United States abstained because the Federal-state clause was not included, which probably made it impossible for Congress to ratify this convention."

We think it will be agreed that the question of prostitution hitherto has been a domestic question, treated through local regulatory measures and in the social-service fields in each separate jurisdiction of government.

The Federal-state clause referred to is article 24 of the proposed treaty on human rights. Its purpose is to preserve the rights of the states. The draft is an abridgment from the International Labor Convention, under which proposals only are made to the treaty states for acceptance or rejection by them, with no binding obligation of implementation of the treaty. We believe it is now agreed that the clause as drawn will not serve the purpose.

No attempt whatsoever is made in the Genocide Convention to meet the situation. In fact, a deliberate, premeditated attempt to enact international law for enforcement in domestic courts appears in that convention. If Mrs. Roosevelt is right in her statement that the absence of the Federal-state clause probably makes it impossible for Congress to ratify the Convention on Prostitution, what shall be said of the absence of a similar clause in the Genocide Convention?

It is often said that the treaties are not self-executing. In the solution of this question there is no difference between a self-executing treaty, which does not require implementation, or one which requires implementation by the enactment of the necessary laws to put it into operation. If there is an obligation to implement a treaty, the obligation is as strong as the treaty itself. The United States does not fail to implement a treaty. If there is an obligation to pass legislation the point is reached when such legislation is passed that the full effect of the treaty shown herein has been accomplished.

Three salient problems are still to be solved in the drafting of the Human Rights Convention—

1. Accommodation to the constitutional system of the United States, the necessity for which is shown by the foregoing.

2. Restrictions by the majority on the right of free speech or freedom of the press.

Your own Mr. Canham who, with other leading citizens of this country has labored valiently to secure a treaty on public information, is entirely familiar with this situation. It is described fully in the Department of State Bulletin of November 14, 1949. The effort to secure that treaty went on the rocks for the time being because it was found that a majority of the states would not give up the right of supervision of the press if the interest of the states was involved. The United States, Great Britain, and other nations could not agree to that concept of free speech and freedom of the press. The entire matter was given up for the present and it was referred to the Commission on Human Rights, which was awaiting the efforts in reference to the treaty on public information before

formulating provisions in those matters in the human rights treaty. It is evident that the same difficulties will arise in the Human Rights Commission.

3. The right to file individual petitions claiming violations of the treaty of human rights.

The United States, Great Britain, and other nations have taken the position that such right is to be limited to the states bound by the treaty; that individuals shall not have the right to petition for violations in their own and other countries. The last vote in the Commission was a tie. It will be extremely interesting to see what the next vote will be.

The committee believes that the United States cannot and will not recede on these matters and that it should not recede.

Many other interesting questions arise in the consideration of these matters, including the right of a state which is a party to a treaty to raise the question of the constitutionality of any of its acts. Articles 13 and 14 of the proposed declaration of the rights and duties of states are to the contrary. If individuals are bound by treaties, and the treaty state cannot raise the constitutionality, will the individual have the power to raise the question of constitutionality? This is of particular importance because of the provision of our Constitution which provides that the Constitution of the United States and treaties are of equal dignity as supreme law of the land. Which is supreme?

Another question is, Have the Senate and the United States and the President the power to suspend the operation of a plain provision of the United States that a ratified and approved treaty becomes domestic law? Will any resolutions or reservations saying that this treaty shall not have that effect stop the operation of the Constitution?

Finally, may we call attention to the evanescent and uncertain character of legislation dependent on the termination of a treaty. Great bodies of legislation may be passed under these treaties and great agencies of enforcement may be set up. Treaties may be terminated in many ways by the President, by Congress, by repudiation and abrogation, by failure to act, or by deliberate breaches. What becomes of the laws and the machinery which has been set up? Those interested in this point are referred to Corwin—The President, Office and Power, page 238.

UNDERSTANDING TO BE INCLUDED IN THE PRESIDENT'S RATIFICATION OF THE GENOCIDE CONVENTION

In becoming a party to the Genocide Convention, the United States understands that neither the convention nor any provision thereof is intended to be self-executing, and the United States assumes no obligation under article 5 to enact legislation to give effect to the provisions of the convention, or to provide penalties for persons guilty of genocide or any other act enumerated in article 3, to the extent that such legislation would have the result of depriving the States of the United States of any jurisdiction which they now possess over crimes and the penalties therefor.

Mr. SCHWEPPE. Next, I offer for the record an editorial entitled "The Genocide Convention," prepared by my distinguished colleague on the committee, Mr. George A. Finch, of Washington, D. C., reprinted from the October 1949 issue of the American Journal of International Law, of which he is the editor in chief. He will speak to this editorial later on in the day.

(The matter referred to is as follows:)

[From the American Journal of International Law, October 1949]

EDITORIAL COMMENT

THE GENOCIDE CONVENTION

(By George A. Finch)

The Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations in Paris on December 9, 1948, and signed on behalf of the United States 3 days later, is now before the

United States Senate for consideration.[1] It is expected that the Committee on Foreign Relations will hold hearings before making its report to the Senate.

The convention was the subject of thorough consideration by the American Bar Association at its seventy-second annual meeting in St. Louis, September 5–9, 1949. It came before the association through two channels, the association's special committee on peace and law through United Nations and the association's section of international and comparative law. Both the special committee and the section agreed that the convention should not be ratified by the United States as submitted. For reasons stated below, the special committee did not suggest reservations, but the section recommended a series of reservations which it thought would cure the convention's defects. The house of delegates of the association appointed a committee of six, not including any members of the special committee or the section, to consider both reports and make recommendations to the house. This action was taken in the hope of avoiding extended debate, but that expectation proved to be in vain. Delegations from the special committee and the section appeared before the house committee and presented and argued their views during the whole of an afternoon. After they retired the house committee proceeded to make its recommendations to the house of delegates in the form of a resolution. The special committee on peace and law through United Nations accepted the resolution, but it was unacceptable to the representatives of the section, who sought to substitute their own recommendations for the house committee resolution when the matter came before the house of delegates as a special order on the morning of September 7. A full-dress debate ensued, lasting the entire morning and well into the afternoon. Attempts to cut off debate were unsuccessful and everyone who had anything to say was given the opportunity to say it, including Hon. Philip P. Perlman, Solicitor General of the United States, who supported the section report, and Hon. Frank E. Holman, the president of the association, who supported the house committee report. When the vote was taken, the section's substitute was rejected and the house committee report adopted by an overwhelming vote. The official action of the American Bar Association is recorded in the resolution adopted, which reads as follows:

"*Be it resolved*, That it is the sense of the American Bar Association that the conscience of America like that of the civilized world revolts against genocide (mass killing and destruction of peoples); that such acts are contrary to the moral law and are abhorrent to all who have a proper and decent regard for the dignity of human beings, regardless of the national, ethnical, racial, religious, or political groups to which they belong; that Genocide as thus understood should have the constant opposition of the government of the United States and of all its people.

"*Be it further resolved*, that the suppression and punishment of Genocide under an international convention to which it is proposed the United States shall be a party involves important constitutional questions; that the proposed convention raises important fundamental questions but does not resolve them in a manner consistent with our form of government.

"*Therefore, be it resolved*, that the convention on genocide now before the United States Senate be not approved as submitted.

"*Be it resolved further*, that copies of the report of the Special Committee on Peace and Law Through United Nations and the suggested resolutions from the Section of International and Comparative Law be transmitted, together with a copy of this resolution, to the appropriate committee of the United States Senate and House of Representatives.

The views of the special committee on peace and law through United Nations, whose recommendations were upheld by the American Bar Association, can be adequately obtained only by reading its printed report of 63 pages. During the preceding year regional conferences of the bar were held in 16 cities of the United States, and the committee's report expressed the consensus of those meetings.

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[1] Senate Executive O, 81st Cong., 1st sess. Genocide is declared to be a crime under international law whether committed in time of peace or in time of war. The crime is defined as the commission of certain acts "with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such." Five categories of criminal acts are enumerated: Killing or causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, prevention of birth within the group, and forcibly transferring children to another group. Made punishable are acts of genocide thus defined, as well as conspiracy, public incitement, attempts and complicity to commit them. Persons committing any of these acts are punishable "whether they are constitutionally responsible rulers, public officials, or private individuals."

The criticism of the convention touches both the basic principles upon which it was drafted and the procedure for enforcing it. Although the convention purports to deal with the repetition anywhere of the shockingly atrocious crimes against humanity perpetrated by Nazi Germany, it fails essentially to do so. Its approach is that of individual crime and not of persecutions instigated by governments. It provides no international court before which governmental transgressions of the international law declared in the convention may be challenged, but relies for the enforcement of that international law upon the punishment of individuals by national courts. It foresees the eventual establishment of an international court, but for the purpose of trying individuals.

It was conceded by all in the debate before the American Bar Association that the Genocide Convention should deal only with mass killings and destruction of peoples which can only happen with official approval or complicity. One of the reservations proposed by the section sought to amend the convention in this respect by limiting its application to acts which directly affect thousands of persons. How can it be expected that a government engaged in such a policy will voluntarily turn over its officials or citizens to any other government or international court for punishment for carrying out that policy? To take the accused by force would require an act of war. The Genocide Convention is an attempt to carry over into time of peace the so-called Nuremberg principle under which captured enemies were held personally liable for acts of aggression and crimes against humanity; but the Nuremberg Tribunal had the physical custody of the persons whose condemnation was demanded. In the debate at St. Louis the question remained unanswered: How is an international tribunal or foreign national court to obtain custody in time of peace of an accused genocidist?

The convention is selective among the groups it would protect in whole or in part. Those singled out for preferred consideration are national, ethnical, racial, and religious groups as such. Political and economic groups were apparently not considered as needing or worthy of protection. Pressure is being brought to bear for the speedy ratification of the Genocide Convention on the ground that genocide is being committed behind the iron curtain; yet the Genocide Convention as submitted would not apply to many such cases. The Soviet Government and its Communist satellites, should they accept the convention, which they have not done up till now, may liquidate property owners and others who believe in private enterprise on the ground that they are political enemies of the state and therefore are not covered by the convention. The same action may be taken against any national, ethnical, racial, or religious group, and the application of the convention to them avoided by the claim that they are being proceeded against not as members of one of these groups as such, but as enemies of the state.[2] The religious persecutions which are taking place in Czechoslovakia, Hungary, and Bulgaria on the grounds that the clergy are enemies of the state would be apt examples of the meaninglessness of this convention in such cases.

As pointed out in the report of the committee on peace and law through United Nations, what is left of the convention "is a code of domestic crimes which are already denominated in all countries as common law crimes." These the convention undertakes to make international crimes. To reach agreement on this basis the convention compromises the system of constitutional law prevailing in the United States. The protection of personal rights is vested principally in the States of the American Union. In certain matters there may be concurrent Federal jurisdiction. By ratification of the Genocide Convention as submitted, it will become the supreme law of the land and displace State constitutions and laws wherever they may conflict with the provisions of the convention. Moreover, under the holding of the Supreme Court in the case of *Missouri* v. *Holland*,[3] the conclusion of a treaty by the Federal Government confers upon it authority in fields of action reserved to the States which the Federal Government would not have without such a treaty. The ratification of the Genocide Convention as submitted would therefore confer upon the Federal Government a large area of jurisdiction which it does not now possess under the Constitution.

In the debates on the Genocide Convention which took place in the section of international and comparative law at St. Louis, former Gov. Harold E. Stassen suggested the possible necessity, in order that the United States might be placed

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[2] The American Jewish League Against Communism recently sent a letter to the Secretary General of the United Nations documenting a previous charge that "400,000 Jews were deported from the Ukraine and White Russia to Archangel and Siberia, because they were considered too prodemocratic to be left on the Soviet borders in case of possible war" (New York Times, September 15, 1949, p. 24).

[3] 252 U. S. 416.

on a plane of equality in international cooperation, of amending the United States Constitution so that treaties shall not become the supreme law of the land unless and until they are implemented by an act of Congress. It is understood that, with the exception of France, all other states require legislative implementation to give treaties the effect of law. The course suggested by Mr. Stassen might remove that particular constitutional difficulty. It would not meet the serious objection to proposals to amend the Constitution through the treaty-making power instead of through the means provided in the Constitution itself.

Great stress was laid in the debates at St. Louis upon the need of upholding the Government's policy of cooperation with the United Nations. The American Bar Association established its special committee on peace and law through United Nations to promote such cooperation, and the duty to do so is reiterated in its present report. The committee finds its duty also to point out that nothing contained in the Charter of the United Nations "shall authorize [it] to intervene in matters which are essentially within the domestic jurisdiction of any state" (art. 2, par. 7). When the Government of the United States accepted the compulsory jurisdiction of the International Court of Justice under article 36 of the statute, the Senate attached the Connally reservation which retained for the United States the determination of whether or not a matter is within its domestic jurisdiction. The Genocide Convention as submitted bypasses this reservation, as well as the Vandenberg reservation relating to the interpretation of multilateral treaties, and confers jurisdiction upon the International Court of Justice in all disputes relating to the interpretation, application, or fulfillment of the convention at the request of any party to the dispute (art. IX).

It should be remembered in this connection that, according to an advisory opinion of the Permanent Court of International Justice, a matter solely within the domestic jurisdiction of a state becomes a matter of international concern when a treaty is entered into on that subject.[4] This principle of international law must not be overlooked if we are to maintain the internal enforcement of our constitutional rights without risk of alien interference or submission to an international appellate jurisdiction.

The proposed Covenant on Human Rights was included in the subjects covered in the reports submitted to the American Bar Association. A completed covenant was not before the association and no discussion took place. The report of the committee of the house of delegates on this subject was unanimously adopted as follows:

"*Resolved*, That the Special Committee on Peace and Law Through United Nations and the Section of International and Comparative Law be authorized in response to the request of the State Department of the United States, to transmit to it the written reports of the Special Committee and the Section and such other comments on the proposed Covenant on Human Rights as they may deem appropriate; also, to transmit such comments as they may have upon the Covenant to the appropriate authorities of the United Nations."

The undersigned, who is a member of the special committee on peace and law through United Nations of the American Bar Association and also of its section of international and comparative law, deeply regrets that the United States did not hold to the position with which it started to negotiate the Genocide Convention; namely, that the crime of genocide properly defined is inherently one committed at the instigation or with the complicity of the state. He also regrets the vain reliance placed upon the unrealistic and impracticable attempt to apply under the conditions existing in the world of today the concept that advance in the development of international law can be achieved only by making individuals the direct subjects of that law. As was pointed out in the debates at St. Louis, such a theory can be made effective only through the establishment of political institutions with power to take custody of offenders. Such institutions do not now exist, and the Genocide Convention makes no provision for them. In a recent address, Ambassador Warren R. Austin, Chief of the United States Mission to the United Nations, discussed proposals to transform the United Nations into a "world government" whose "laws shall govern individuals as well as states." He asked: "What will be the dividing line between the jurisdictions and judicial powers of the world government and the several states? Is it as simple a problem as that of the United States, which required a civil war, and repeated judicial decisions to determine?" He answered these questions as follows: "We should pause in contemplation of the risk of seeking to estab-

[4] Advisory Opinion No. 4, Tunis-Morocco Nationality Decrees. Hudson, World Court Reports, vol. I, p. 145, at p. 156.

lish any world government now. We must deal with the world we have and the tools we have." He was persuaded by experience that such an agreement cannot be had "at this time or within the predictable future."[5]

It is no answer to argue that a state cannot be haled before an international court for violating international law. If that were true, the world might just as well give up all hope of preserving peace based on law and justice—but it is not true. States have been brought before international tribunals for violations of international law many times in the past, i. e., the Alabama Tribunal at Geneva. As the undersigned has said on other occasions, a structural defect in the United Nations Charter is its failure to provide for the determination of acts of aggression by the International Court of Justice at The Hague. For the same reason, genocide should be defined to include primarily acts emanating from governmental policy or complicity for which the offending government should be made answerable before an international court of justice. Such jurisdiction would not involve war any more than the submission to the court of any other subject of international dispute. We would at the least have a judgment at the bar of public opinion, and have available many sanctions short of war.[6] If national governments wished to add the sanctions of their own law and courts by providing for the punishment of persons within their jurisdiction who might in some way be guilty of or implicated in such crimes, so much the better. The special committee included in its report the suggestion of Judge Orie L. Phillips, of the United States Circuit Court of Appeals at Denver, a member of the committee, that the wiser course would seem to be, if the offenses defined in the Genocide Convention are in fact international crimes, to enact domestic legislation under section 8, clause 10, article I of the Constitution of the United States, which expressly confers upon Congress the power "To define and punish * * * offenses against the law of nations."[7]

The special committee in peace and law through United Nations made earnest efforts to formulate reservations which would make the Genocide Convention acceptable as creating international obligations for the United States, and at the same time meet the constitutional situation in this country. This the committee was unable to do. It could not see that the section on international and comparative law had been any more successful in drafting the reservations it proposed. The special committee felt that the constitutional questions raised by the convention could only be properly solved by action of both Houses of Congress, and not by the Senate alone. It was for this reason that the American Bar Association directed that copies of the reports submitted be transmitted to the appropriate committees of both the Senate and he House of Representatives.

Mr. SCHWEPPE. Something has been sought to be made of an alleged conflict within the American Bar Association as between the committee on peace and law, on the one hand, and the section on international law, on the other hand.

CONFLICT IN THE BAR ASSOCIATION ONLY FORMAL

Actually this so-called conflict is for our purposes here largely formal. The section whose resolution you have before you at the direction of the house of delegates of the American Bar Association (the house of delegates desired the United States Senate to have the fullest information possible) recommended ratification of the Genocide Convention, with seven reservations: The peace and law committee recommended against ratification as submitted, believing that

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[5] Address at Lenox, Mass., August 12, 1949. Department of State Bulletin, vol. XXI, No. 530 (August 29, 1949), p. 283.

[6] The commercial treaty of 1832 between the United States and Russia was terminated by the United States on January 1, 1913, following a resolution adopted by the House of Representatives on December 13, 1912, that Russia had violated the treaty by refusing to honor passports duly issued to American citizens of the Jewish race or religion. The House resolution declared: "That the people of the United States assert as a fundamental principle that the rights of its citizens shall not be impaired at home or abroad because of race or religion; that the Government of the United States concludes its treaties for the equal protection of all classes of its citizens, without regard to race or religion; that the Government of the United States will not be a party to any treaty which discriminates between American citizens on the ground of race or religion." For further information on this incident, see this Journal, vol. 6 (1912), p. 186.

[7] See American Bar Association Journal, August 1949, p. 625.

the reservations so emasculated the convention as to leave nothing substantial, and that it was more forthright to say that this convention as submitted should not be ratified. It was also believed by us that it would be better to have the convention sent back to the United Nations for appropriate changes. The house of delegates of the American Bar Association voted down the recommendations of the section with its seven reservations, and, by an overwhelming vote, resolved officially that the convention should not be ratified, as submitted. Incidentally, the Solicitor General, Mr. Perlman, made an impassioned plea before the American Bar Association in support of the section report. I suggest that you examine the resolution of the section which Mr. Perlman so fervently supported. It will amaze you.

Senator McMAHON. Maybe we had better look at that now.

Mr. SCHWEPPE. I have a copy of it right here.

Senator McMAHON. Mr. Perlman in supporting the resolution recommended by the section on international comparative law was faced with a choice between this and the outright refusal to ratify.

Mr. SCHWEPPE. That is right.

Senator McMAHON. And in his remarks, there is no claim made that he made a statement that this was satisfactory to him but only that this was more satisfactory, of course, than an outright rejection.

Mr. SCHWEPPE. No. The record shows, and I am thoroughly familiar with it, Mr. Perlman made no such distinction.

Senator McMAHON. Did he say that it was satisfactory to him?

Mr. SCHWEPPE. Well, I can get the exact record, but he supported that resolution with those reservations without any personal reservations on his part. I was there and participated in the discussion.

Senator McMAHON. We will get the transcript on that.

POSITION OF JUDGE PATTERSON STARTLING

Mr. SCHWEPPE. So far, then, as the rather startling position taken yesterday is concerned—taken by Judge Patterson and others—that the United States Senate ratify without reservations, you have the united objection of the house of delegates of the ABA, of its committee on peace and law and of its section on international law, including Mr. Perlman. In fact, the State Department has in its letter of transmittal made one important reservation, which my colleague Mr. Finch will discuss later. This united opinion of the mentioned lawyer groups may perhaps not persuade you concerning the form and content of this convention, but I know you will carefully weigh it for what it is worth. After all, we are not talking here about general moral principles, as many of the good people who have appeared here, seem to think. We are talking about a specific legal document, intended, if ratified, to be legally binding upon the United States of America.

UNITED STATES DELEGATE OUTVOTED ON PROPER DEFINITION OF GENOCIDE

I have had the misfortune, apparently not shared by some of my colleagues at the bar who testified yesterday, of having spent a number of days in reading the United Nations record on the Genocide Convention, first in the Ad Hoc Committee, which prepared the initial text, and later in the Sixth or legal committee, which prepared the final draft that was approved by the General Assembly. Upon an ex-

amination of this record one is struck very early with the discovery that the United States representatives were pretty promptly outvoted on what they deemed a fundamental—a sine qua non—of a proper definition of the crime of genocide, namely, that genocide could not be an international crime except "with the complicity of government."

Mr. Maktos of our State Department was chairman of the Ad Hoc Committee and on April 15, 1948, put the official United States position into the record as follows:

> The chairman, speaking as the United States representative, proposed adding to the definition of genocide, which had been agreed upon at the previous meeting, the words, "with the complicity of the Government." The United States delegation felt in fact that genocide could not be an international crime unless a Government participated in its perpetration. In introducing this amendment, Mr. Maktos in no way wished to exempt from responsibility or excuse from punishment individuals not directly connected with a Government. But the common law of every country covered crimes not committed with the complicity of the Government. Here was a condition sine qua non of genocide which should be inserted in the definition.

This position which was also later the British position was voted down.

POLITICAL GROUPS EXCLUDED

Further, Mr. Maktos proposed on behalf of the United States the inclusion of "political groups," which had been included in the General Assembly resolution of December 11, 1946. This position, it will be noted later, was at first approved in the Sixth Committee, over the opposition of Russia, and its satellites and a few others—I shall give you the vote subsequently—and then the Sixth Committee reversed itself and excluded "political groups."

As I shall again suggest a little later, the instrument with which our delegates came home, over their firm convictions on matters of principle, did not bear much resemblance to the convention they advocated. The losses which our representatives suffered are part of the reasons why our committee thinks the convention should not be ratified as submitted; but before doing so, I wish to touch briefly on our own constitutional situation, as background for some further observations by myself and my two colleagues.

THE CONSTITUTIONAL SITUATION

By reason of article VI of the Constitution of the United States, making ratified treaties the supreme law of the land, superior to all State laws, and coordinate with the Constitution itself and acts of Congress, one serious objection to the Genocide Convention is that it seeks to impose domestic law on the United States by the treaty method and takes away from the individual States of the United States the jurisdicion which under the Constitution they have always had. The United States appears to be the only country where this unusual and difficult constitutional problem exists, except possibly France. In other countries, ratilcation of a treaty does not make it domestic law automatically binding on all domestic courts, unless additional local legislation makes it so.

MRS. ROOSEVELT'S POSITION ON THE CONVENTION OF TRAFFIC IN PERSONS

In this connection, and as logically bearing on the Genocide Convention, attention is called to a statement contained in Mrs. Eleanor Roosevelt's syndicated column, My Day, for December 5, 1949. Mrs. Roosevelt is a United States representative to the United Nations General Assembly and Chairman of the Human Rights Commission of that body. She pointed out in her column that day that the United States had refrained from voting on the Convention on Traffic in Persons (directed against prostitution) because the proposed convention did not contain the so-called "Federal-State clause." She said:

> Of the last three items before our Committee Three, we voted first on the convention on the traffic in persons. The United States abstained because the Federal-State clause was not included, *which probably made it impossible for Congress to ratify this convention* * * *." [Emphasis supplied.]

The Genocide Convention, being one of the first products of the United Nations, does not contain the so-called "Federal-State clause." This clause came into being later only after vigorous attention was called by members of the American Bar Association, to the unbalancing of our own constitutional system that would result from the ratification of treaties relating to human rights and genocide—treaties which on adoption would become automatically the "supreme law of the land" and would be imposed on our States and people as immediately operative domestic law, creating civil as well as criminal liability. Incidentally, none of the proponents yesterday discussed civil liability of individuals under this convention, which arises automatically upon ratification, because violation of a criminal law is also an actionable tort. (See Restatement of Law of Torts, sec. 286 by American Law Institute; see *Kardon* v. *Gypsum Co.*, 69 F. Supp. 512.) The State Department's proposed reservation recognizes the existence of civil liability. This "Federal-State clause" is now contained as article 24 of the current draft of the proposed International Covenant on Human Rights. (Draft of June 1949, prepared by United Nations Commission on Human Rights—see State Department Bulletin, July 11, 1949.) Thus, in the draft of the International Covenant on Human Rights an effort has been made to recognize the constitutional problems which arise in the constitutional system of the United States, but no such effort was made in the drafting of the Genocide Convention. Obviously, Mrs. Roosevelt's statement, above-quoted concerning the Convention on Traffic in Persons, as a matter of logic, applies equally to the genocide convention, which does not contain the "Federal-State clause," and thus "probably made it impossible for Congress to ratify this convention."

COMMISSION WITH GOVERNMENT COMPLICITY LEAVES ONLY A FEW COMMON-LAW CRIMES AND OTHER DEFECTS

Further, as to the form of the convention as submitted—while the genocide convention idea was conceived to prevent the repetition of the atrocious crimes in the form of mass murder committed against humanity by Nazi Germany, the text presented actually goes far afield of that goal in that, among other things, (*a*) government complicity was not included as an essential of the definition, thus leaving only a group of domestic common-law crimes (see Mr. Maktos' statement,

supra, and (*b*) "political" groups were not included, and (*c*) national, ethnical, racial, and religious groups are merely included "as such," and (*d*) "mental harm" as well as "bodily harm" is included. It also includes a part of a group which, of course, may embrace a single person, as recognized in the State Department's formal letter of transmittal. In consequence of (*b*) and (*c*) the proposed convention does not prohibit the only important genocide now going on, viz, in those countries where dissident groups and persons are regularly proceeded against on political grounds as enemies of the state. In fact, the discussions, in the Sixth Committee of the United National General Assembly, which prepared the final text of the genocide convention, affirmatively show that under leadership of the United States and some other countries "political groups" were at first included (as they had been included in Resolution 96 (I) of the General Assembly of the United Nations originally sponsoring a genocide convention) over the dissent of Soviet Russia and satellite countries, aided by the votes of small nations, principally from Latin and South America (Soviet Russia, Poland, Ukraine, Byelorussia, Czechoslavakia, Uruguay, Venezuela, Argentine, Brazil, Dominican Republic, Iran, Belgium— see vote in Official Records of Third Session of General Assembly, part I, Legal Questions, Sixth Committee, Seventy-Fifth Meeting), but that committee finally reversed its previous action of including "political groups" and excluded them from the draft finally adopted. Representatives of the United States at last yielded, althought they maintained that as a matter of sound principle and to make the convention really effective, political groups should be included (ibid, 128 Meeting).

The omission of "political groups" and the requirement that there must be an intent to destroy the groups actually named in the convention "as such," render the convention meaningless. Soviet Russia and its cohorts could readily approve it. This almost hopeless weakness of the convention has also been pointed out in an able article appearing in the Congressional Record for July 6, 1949, page A4510.

Why should the United States, under these circumstances, become a party to this convention with the difficult and serious problems which it raises for us, if the instrument is not effective to combat genocide where it presently occurs or is likely to occur?

REGRETTABLE THAT UNITED STATES DID NOT HOLD TO ITS ORIGINAL POSITION

It is to be deeply regretted that the United States did not hold to the position with which its representaives started to negotiate the genocide convention, namely, that the crime of genocide, properly defined, is inherently one committed by, or at the instigation of, or with the complicity or acquiescence of governments, and that otherwise it cannot effectively exist because it would otherwise be dealt with at home as a domestic crime only. But this concept was completely departed from and the approach of the convention, as now submitted is that of individual crime and not of persecutions instigated or aided by governments.

Much of the comment being currently made in support of the Genocide Convention is based on the inadvertent and mistaken assumption that as drawn it prevents—

systematic homicide or the deliberate destruction of whole human groups for national, racial, or religious purposes, by conquerors and directors (New York Times editorial, January 22, 1950).

This is far from the case in the draft as submitted.

OBJECTIONS ARE WORTHY

The basic difficulty with the attitude of some people appears to be that because "prevention of genocide" and "protection of human rights" seem to be fine ideas with which nobody disagrees, therefore the United States should approve treaties relating to these subjects without taking a searching look at the text and pointing out its faults and its inappropriateness to the American scheme of constitutional government. True, this document was prepared with participation of American representatives at the United Nations, including persons from the State Department, but our representatives were outvoted on what they deemed to be basic principles, including also their continued opposition to the insertion of "incitement to commit genocide," which our delegation pointed out was a plain infringement of freedom of speech and freedom of the press. The point sought to be made yesterday by some spokesmen, that the Peace and Law Committee of the American Bar Association was drawing a red herring on the free speech question, was made in ignorance of the record, which shows that the United States representatives vigorously urged the elimination of "incitement" as a violation of free speech. In the report of the Sixth Committee, page 3, with reference to the eighty-fifth meeting, the following appears:

With respect to article VI of the draft convention, which listed the different acts to be punished, prolonged debates took place, particularly on the question of the retention or suppression of subparagraph (*c*) providing that "direct incitement in public or in private to commit genocide shall be punishable whether such incitement be successful or not." At its eighty-fifth meeting, the Committee rejected, by 27 votes to 16, with 5 abstentions, an amendment submitted by the representatives of the United States of America (A/C. 6/214) to delete this subparagraph.

Incidentally, we thought our State Department was right in this position and our Committee said so in its report.

Senator McMAHON. Now at that point, Mr. Schweppe, would you care to refer us to any decision of the Supreme Court on the matter?

Mr. SCHWEPPE. Yes. In my opinion, the last decision of the Supreme Court of the United States in the Terminello decision that came up in Chicago would cover this point, where the majority of the Court held "even inciting to a riot" was within the realm of free speech. The State Department took this position before the Terminello case came down. As I say, the record shows that they were outvoted on it after it was put up for an official vote. My point is simply this is not a red herring we have created. As a matter of fact, our State Department said that the inclusion of the words "incitement to genocide" might make it difficult to get that convention ratified in the United States. It is in the record.

Senator McMAHON. Entirely aside from that, the basic question now before us, since our delegation did retreat, is the legal question as to whether or not it in fact is a restriction on the right of free speech as we interpret it under our law.

Mr. SCHWEPPE. Well, of course, the interpretation under paragraph 9 of this convention is not left to us. The interpretation, the application, and the fulfillment of this convention is left under paragraph 9 to the International Court. We don't determine it. We have an initial guess at it, but they finally determine it; we don't.

Senator MCMAHON. Let us restrict ourselves to the initial guess before we get to article 9.

Mr. SCHWEPPE. As I have said in the report here, I think the State Department was right, and in our report we said it was right and the observations that were made here yesterday by some of the spokesmen, I think, were inaccurate and beside the point. At any rate, my point is this: That is not a point we invented. That is a point on which our Government stood at Paris until it was voted down. I have the report right here of the Committee.

Senator MCMAHON. Have you the Terminello case here with you?

Mr. SCHWEPPE. No, I don't have it, but I am thoroughly familiar with it. Terminello was decided in May of 1949. It is that Chicago case where the gentleman addressed the audience, and it resulted in quite a riotous performance.

Senator MCMAHON. All right.

LACK OF CONSTITUTIONAL SAFEGUARDS

Mr. SCHWEPPE. The leader of the American delegation said at the seventy-fourth meeting of the Sixth Committee (ibid.):

> The United States delegation intended, at a later stage, to show the need for the establishment of an appropriate international tribunal.

Thus an international tribunal with jurisdiction to try American citizens for acts of genocide (according to the definition contained in the convention, which goes far beyond mass murder) is in contemplation and under actual consideration, without any assurance that they will be surrounded by the constitutional safeguards and legal rights accorded persons charged with domestic crimes. Is it any wonder that many serious American students object to an international court for genocide at this stage of world history, and urge that we do not take the first step of ratifying this convention, as submitted, unless we are prepared to take the second step of approving an international court for trial of American citizens. As shown by the discussions in the Sixth Committee, the reference to an international penal tribunal was deliberately made in article VI of the Genocide Convention to put the world on notice that it was being planned.

WHAT THE REAL PURPOSE SHOULD BE

On the other hand, the real purpose of an effective genocide convention must, and should, be to protect groups against the brutal excesses of their own governments. If this convention is to be enforceable only in domestic courts, as was so vigorously argued in support of it yesterday by Judge Patterson and others, what good would that have done the Jews under Hitler? What good will it do behind the iron curtain? How will it prevent genocide where it now goes on? That provision, with the further omission of "political groups" and the inclusion of "as such," render this treaty a complete delusion.

FEDERAL-STATE CLAUSE

As pointed out above, our representatives now are, in drafts of later proposed treaties, putting forward the so-called federal-state clause in an effort to keep our constitutional system in balance, but it was not included in the Genocide Convention.

And the ultimate objective of the proponents of the Genocide Convention is to submit American citizens to trial by an international court on account of having, for example, inflicted "mental harm" on a "national, ethnical, racial, or religious group." (See articles VI and II of the Genocide Pact.) The fact is that the people who wrote the Genocide Convention were not content with dealing with the evil that everyone deplores, namely, the group massacres engaged in by Hitler and other historical assassins, but saw fit to write into the Genocide Convention "civil rights" ideas, such as inflicting "mental harm" on a group "in whole or in part."

CONVENTION APPLIES TO INDIVIDUALS WHO ARE VICTIMS

What is meant by inflicting "mental harm" on part of a group which may mean a single person? Also, what about a lynching or a race riot? The State Department's letter of transmittal recognizes that genocide may be committed against a single individual. If, for example, in a town in the United States of America, where a crime had been allegedly committed by some unidentified Chinaman, I should decide to get rid of all, or most of, the Chinamen in the town by force, and should, in the process, kill or maim one Chinaman, I would be guilty of genocide, in that, with intent to destroy part of a racial group, I had killed or maimed one individual. The Chinaman could well be a colored person, or member of any other minority group.

HOW FAR THE CONVENTION MIGHT BE APPLIED HERE

Let us not delude ourselves that genocide as defined in this convention, which omits the essential element "with the complicity of government," could not happen here.

As forecasting what we may be accused of if the Genocide Convention is ratified by us, attention is called to the formal complaint that was filed with the United Nations by a group of Europeans against our trial of the 11 Communists in New York, as being a violation of the Declaration of Human Rights approved in Paris in 1948. This complaint was filed with the United Nations by a deputation from the International Association of Democratic Lawyers of which no Americans are members, but of which Mr. Rene Cassin of France is president, and Professor Cassin was and is a prominent member of the United Nations Commission on Human Rights, of which Mrs. Eleanor Roosevelt is Chairman.

While some attempt has been made to defend the "mental harm" phrase on the ground that it is said to have originated with a Chinese statement that the Japanese deliberately plied subject peoples with narcotics and thus damaged their brains or "minds," this state of facts would seem rationally included in causing "bodily harm," in consequence of which the words "causing serious bodily or mental

harm to members of the group" must be deemed to have been within their usual and ordinary meaning. Certainly, if "mental harm" in its ordinary and commonly accepted meaning was not deliberately intended, a much better word, or none at all, could have been chosen to cover that specific state of facts, because "bodily harm" was already covered. It cannot be assumed that the unambiguous words chosen, viz, "bodily or mental harm," will be construed by any court except in their usual sense, even if some other hidden and unusual meaning may have in fact been intended. The words "bodily harm" and "mental harm" or "mental suffering" or "mental anguish" have well-defined legal meanings. Let us bear in mind that this convention, as submitted, will be construed under article IX by the World Court.

The undersigned has had the interesting experience of talking to numerous people who think that the idea of a Genocide Convention, for example, is fine, and wonder why anybody should object, until he asks them: "Have you ever read it?" to which they consistently answer "No."

THE ABA RESOLUTION

The American Bar Association in an official resolution last September at St. Louis, of which you have a copy, disapproved the Genocide Convention as submitted.

I think that the lawyers knew that their resolution in the convention at St. Louis, last September, would not be popular with persons who like high-sounding phrases and ideas, but who never have examined the text; they were so told by Mr. Perlman and others; but, at the risk of taking what may be, to some, an unpopular action, the lawyers, acting through their national body in an official resolution, of which Congress and your committee have copies, felt that they had a duty to tell the American public and the United States Senate that the Genocide Pact, as submitted, should not be ratified.

BACKGROUND OF THE RESOLUTION

A part of the background for the official resolution of the American Bar Association is the report of that association's special committee on peace and law through United Natins, dated September 1, 1949, which has been put into the record. That report recommended "that the Genocide Convention as submitted shall not be ratified by the United States," and fully covers the numerous objections to the convention, some not here mentioned, and the reasons for the recommendations. It is not the purpose of this statement merely to repeat that report, but to high light certain points and to make some additional comments. With that report before it as part of the background, the American Bar Association officially resolved, on September 8, 1949, "that the Convention on Genocide now before the United States Senate be not approved as submitted."

Now, Mr. Chairman, I have a few comments to make on some of the statements that were made yesterday, which may be helpful for the record.

ANSWER TO DEAN RUSK

I felt sure that Dean Rusk of the State Department must have misspoken when he said that the intent must exist to destroy the whole group, even if only a part of the group was proceeded against. This statement, unless inadvertent, is of course contrary to the text which reads, "with intent to destroy, in whole or in part" a group, so that intent to destroy part of a group is genocide. As pointed out in the State Department's own letter of transmittal, this might be one person. It would also be contrary to the historical development of the convention, which came out of the Ad Hoc Committee in a draft requiring intent to destroy a whole group. The "in part" was inserted in the sixth committee on the recommendation of Norway.

Senator McMAHON. If it is one person, with intent to destroy in whole or in part, now what is "part"?

Mr. SCHWEPPE. Part of a group.

Senator McMAHON. National, ethnical, racial, or religious group as such?

Mr. SCHWEPPE. To destroy a group in part, with the intent to destroy a group in whole or in part. In other words, it is intent to destroy a group or in part is sufficient to make the crime genocide. That is not only the meaning of the language, but that is how it developed.

Senator McMAHON. It could mean one person.

Mr. SCHWEPPE. It could mean one person; it could mean more. What is part of a group? One person is part of a group. I am part of my committee of three. I suppose you, Mr. Chairman, are part of your committee of five.

He also stated that as genocide is defined the convention has no application to the United States, and that genocide has never occurred here. That gets us down to the definition—the omission of "with the complicity of government," the meaning of "in part," "mental harm," et cetera—which, as submitted, will not be finally construed by us but by the World Court, under article IX, which has jurisdiction over interpretation, application, and fulfillment. I have pointed out that it would be entirely reasonable to include race riots under the present definition, and also lynching, if engaged in with intent to destroy part of a group.

Dean Rusk conceded that the convention does not cover all groups, and the named ones only "as such." With "political groups" excluded, of course, Russia and others will have no problem in ratification.

He stated that while as a criminal law the treaty is not self-executing, we are committed to pass appropriate legislation, including penalties. He did not comment on the civil liability of individuals in damages undoubtedly created by the treaty even without provision of criminal penalties; in other words, as to civil liability, the treaty is self-executing. Confer the reservation of understanding proposed by the State Department.

ANSWER TO MR. PERLMAN

As for Mr. Perlman, many of his legal observations on treaty law we concur in; they are elementary. However, I disagree with his answers to the hypothetical questions that were put concerning Protestants and Catholics or driving the Chinamen or some of them out of

Chinatown with guns. That, in my interpretation, is genocide. I have checked this view with other informed persons here who are not members of my committee. They agree with me, and disagree with Mr. Perlman. Mr. Perlman ignores the "in part" in the definition. I also believe that forceful action against part of a colored group, with intent to destroy part of the group, would be genocide. And please remember, neither Mr. Perlman's nor my construction would be controlling, but that of the International Court of Justice.

ANSWER TO JUDGE PATTERSON

As for Judge Patterson, the distinguished ex-Secretary of War, I say, with all deference, that he obviously had not read the record of the Ad Hoc Committee and the Sixth Committee of the United Nations. If he had, he would not have made some of the observations he did, as for example, his argument about the free-speech point, in which he undertook somewhat to disparage what he thought was our position. As pointed out before, our committee was merely supporting the official position of the State Department, taken in the Sixth Committee, on which it was outvoted. Our State Department members felt that inclusion of "incitement to genocide" might prevent ratification by the United States. And we think the State Department was right and Judge Patterson was wrong, as judges sometimes are.

Judge Patterson also glosses over the "in part," apparently not having read the record as to how the phrase got into the convention.

Judge Patterson also claimed there was no individual obligation until a Federal law is passed to provide criminal penalties. He overlooks completely the field of individual civil liability which arises on the face of the treaty without implementation. As drawn, our courts would be open to anyone who wants to sue another for damages for a genocidal act, as defined. And the final meaning and application of the convention is for the International Court under article 9. The State Department recognizes this civil liability. See its proposed reservation in the letter of transmittal. Also, Judge Patterson admits in the next breath that we are obligated, if we ratify, to pass such legislation, when even on his theory individual liability will arise.

In making the argument that no reservations are needed, Judge Patterson, as previously pointed out, has even the American Bar Association's section on international law against him, whose report Mr. Perlman so vigorously supported in St. Louis last fall. Judge Patterson advocates taking care of the many proposed reservations, through implementing legislation by Congress. This, of course, overlooks that any matters relating to the interpretation, application, or fulfillment of the Genocide Convention are subject to final decision by the Court of International Justice under article 9 of the convention, and that any interpretations and understandings that Congress might include in implementing legislation, if not in accord with such final interpretation, would constitute a breach of the treaty—a nonfulfillment of its provisions. The only legally safe way of avoiding such a breach would be by reservation, as shown by the international law section's report. It has been the view of the peace and law committee that the convention is so dangerously drawn from

the United States standpoint, while at the same time not effective to prevent real genocide where it now goes on, that, as submitted, it should not be ratified. The American Bar Association, speaking officially through its house of delegates, has "resolved that the Convention on Genocide now before the United States Senate be not approved as submitted."

Well, enough of these comments. I must let my associates take over. Our desire is not to obstruct but, on our own time as citizens and lawyers, to aid you in arriving at an informed judgment with respect to this convention. I appreciate your courtesy and thank you very much.

Senator McMAHON. Now I think it is important at this point, Mr. Schweppe, to put in the record what Mr. Perlman said yesterday regarding his appearance. [Reading:]

I think it is fair to say—

this is quoting Mr. Perlman—

I think you will be told if any of the members of the section are permitted to make a statement here, that even the reservations that they have suggested were adopted by the section in the hope of nullifying those who are seeking to defeat the whole proposition before the American Bar Association and do not actually represent what might be thought to be a need, a pressing need, for such reservations. It was an attempt to arrive at something that would answer the objections that had been made.

Now we have here, I believe, the chairman of the group. We will hear his testimony and we will find out whether it was a strategic move or whether it was a move made with a feeling that it was basic. As a lawyer, you know.

Mr. SCHWEPPE. I am familiar with the record. I happen to be a member of the house of delegates, and the first time I saw it was in the form of a resolution with seven reservations. I believe you have it in the same form in which I first saw it; namely, the mimeographed form they handed you a few moments ago.

Senator McMAHON. I am referring now to a study that has been gotten up on the convention. I want to direct your attention to article 2, because you have devoted considerable of your case to the proposition that "in part" could mean one single individual.

Mr. SCHWEPPE. In some given case.

Senator McMAHON. Yes.

Mr. SCHWEPPE. If you want to drive five Chinamen out of town or, I think, driving one Chinaman out of town could be in part with the group.

Senator McMAHON. Now, quoting [reading]:

Article 2 defines genocide as any of the five acts enumerated therein, committed with the intent—

of course, you are not overlooking the word "intent"—

to destroy in whole or in part a national, ethnical, racial, or religious group as such.

Of course, the words "as much" cannot be disregarded either.

Mr. SCHWEPPE. No.

Senator McMAHON. They are certainly words of limitation, aren't they?

Mr. SCHWEPPE. Definitely, and were deliberately put in for that purpose, as the record shows.

Senator McMahon (reading):

The main characteristic of genocide, the object, the act, must be directed toward the destruction of a group or groups. Groups consist of individuals and, therefore, action must in the last analysis be taken against them. However, these individuals are important not per se, but only as members of the group to whom they belong. The acts enumerated in article 2 become acts of genocide in strictly defined conditions.

Now this is the important part:

First, there must be the intent to destroy a group in whole or in part. Therefore, acts resulting in such destruction, but committed without such an intent, would not fall under this definition.

In other words, assuming just for purposes of discussion that you are right in saying that it could apply against one person. If there was not the intent to destroy that person because he was part of a group, then it wouldn't apply.

Mr. Schweppe. Oh, no; it wouldn't in those cases. As a matter of fact, Mr. Chairman, I think the difference on this "in part" thing, subject to what Mr. Rusk said yesterday, which I thought was probably inadvertent, on this question of "in part" we don't differ very vitally from some of these other briefs that were presented yesterday.

Judge Patterson said "in substantial part," and I think one of the gentlemen from Massachusetts made the same point. Now, whether you say "substantial part" or "part," one would be a substantial part of a group of five or a group of three. It gets down to judgment. The point is that the intent does not need to exist to destroy the whole group. It needs only to exist to destroy part of the group. Now whether we say part of the group could mean one person or whether we say a substantial part again requires us to inquire into the facts, as you often do in these cases, what is the group and how many were there?

Senator McMahon. Part of the group—but because he is part of that group. Now, let's take a lynching case, for example. Let's assume that there is a lynching and a colored man is murdered in that fashion. Is it your contention that that could be construed as being within the confines of this definition; namely, with intent to destroy him as part of a group?

Mr. Schweppe. Well, Mr. Chairman, I don't want to answer that categorically. Let me give you this illustration, though, and I will give you an opinion on it, just one man's opinion, and not that of the International Court, which will ultimately tell us. Let's assume a little town where I live, where the colored groups are small, a very infinitesimal part of the population. Suppose we have the little town of Rendon, which is 10 miles from Seattle, and they have five colored people living in the town and, we'll say, that sometimes some crime of violence occurs, and as a result of it, some ill-meaning citizens in that community—I wouldn't call them well-meaning—decide that they want to get rid of all of those people.

Well are they proceeding against them because they want to get rid of them as a group, as a racial group? Are they proceeding against them because they thing some one of them may have been guilty of this heinous offense? I don't know. I say there is a question. Actually, a race riot of some substantial character would be more clearly within my concept of genocide within the meaning of this language. Now again, as I say, I don't want to put out these views as positive

convictions. I can no more put them out as my opinions, but this whole concept of part of a group, which may be part of a group in a town, doesn't mean the whole group. Certainly it doesn't mean if I want to drive 5 Chinamen out of town, to use that invidious illustration, that I must have the intent to destroy all the 400,000,000 Chinese in the world or the 250,000 within the United States. It is part of a racial group, and if it is a group of 5, a group of 10, a group of 15, and I proceed after them with guns in some community to get rid of them solely because they belong to some racial group that the dictators don't like, I think you have got a serious question. That is what bothers me.

What bothers me, Mr. Chairman, about this convention, and, as I said, I take a back seat to no one in being opposed to genocide; I think it is one of the most vicious crimes on the face of the earth and I would like to see it prevented, and I think it could be prevented by a convention that has more teeth in it than this one has got. What disturbs me about this convention is that it doesn't prevent the genocide that is going on and at the same time raises for us what I conceive to be a lot of very serious problems, to which I don't know the answer, and some of the answers we can't give. They will only come to us from an international court at some later stage. That is what troubles me about it.

Senator McMAHON. Just to continue for a moment—I think it would be well to be in the record. The answer as to whether genocide was committed or not in such cases as dropping a bomb inadvertently or in similar instances is simple. In that case, it would not be.

Mr. SCHWEPPE. No.

Senator McMAHON. More complicated is the question of intent with regard to the subjective appraisal of the guilty; namely, whether the culprit intended to destroy the group or the destruction was achieved without such intent simply as a result of an otherwise intentional action. The problem of intention would also be involved in the case of a destruction of a group on orders, because those who destroy the group could claim that no intention could be ascribed to them. A majority of the Commission was, however, of the opinion that there was no genocide without intent and that if intent was absent, the act would become simple homicide. Therefore, according to the wording of article 2, acts of destruction would not be classified as genocide unless the intent to destroy the group existed or could be proven, regardless of the results achieved.

Mr. SCHWEPPE. I am in agreement with that.

Senator McMAHON. Have you any other observations?

Mr. SCHWEPPE. No; I have nothing. As a matter of fact, I would like Mr. Rix and Mr. Finch to continue the discussion from our viewpoint. I think they have some other things to contribute.

Senator McMAHON. All right, then. We will take a 2-minute recess and we will continue again.

(Whereupon, a short recess was taken.)

Senator McMAHON. All right, we will continue. Our next witness is Mr. Carl B. Rix, vice chairman of the American Bar Association Special Committee of Peace and Law through the United Nations.

STATEMENT OF CARL B. RIX, VICE CHAIRMAN OF SPECIAL COMMITTEE ON PEACE AND LAW THROUGH UNITED NATIONS OF THE AMERICAN BAR ASSOCIATION

Mr. RIX. Before I proceed, may I direct your attention to the letter of transmittal of the State Department to the Senate of the United States on this question of intent which has just been discussed, in which it is said on page 4 [reading]:

> However, if an individual is murdered by another individual or by a group, whether composed of private citizens or government officials as part of a plan or with the intent to destroy one of the groups enumerated in article 2, the international crime of genocide is committed, as well as the municipal-law crime of homocide.

Senator MCMAHON. I would like to read that myself. You say that is on page 4?

Mr. RIX. Page 4 of the letter of transmittal of the State Department.

EFFORTS TO APPLY INTERNATIONAL LAW TO INDIVIDUALS

The traditional concept of international law was that of the relation of states to each other—as Hamilton put it, the relation of sovereign to sovereign.

A determined effort is now being made, following the Nuremberg trials, to change that concept to the relations of states and individuals in the states, thereby imposing individual liability for international law and creating unknown individual rights. The concept has been broadened also in the nature of the subjects to be covered. For instance, human rights have never been considered to be international in scope. Dr. George Malik, Minister of Lebanon in the United States, and rapporteur of the Human Rights Commission, and Mrs. Roosevelt recently issued a bulletin on the Covenant of Human Rights in which Dr. Malik says [reading]:

> These rights and freedoms have hitherto fallen exclusively within the domestic jurisdiction of the separate states, but the covenant will have the effect of lifting them from being the independent and exclusive concern of the separate sovereign states to being the common concern under international law of all the covenanting states.

This means that if domestic questions are made the subject of a treaty, they thereby become part of the structure of international law.

If to that is added the theory of individual liability, instead of liability only of a state, it is easy to see the extent of the change which will come to us and other nations. And on that subject of individual liability, I was struck yesterday by the fact that Judge Patterson, I believe it was, said that there was no individual liability, if I quote him correctly, under this treaty.

May I call your attention to the specific provision in the covenant that it is binding on individuals, constitutionally responsible rulers and public officials.

PARTS OF THE CHARTER WHICH ARE APPLICABLE

Article 27 of the Charter of the United Nations provides [reading]:

> Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter.

In order to get away from this provision and to deal with domestic questions, it has been found necessary to change those questions to international law by the use of treaties. That method of creating international law has been specifically approved by the International Court, in an opinion by Judge Hudson in the Danzig case, so that the method is perfectly legal, according to the international authorities. A considerable number of treaties of that kind have been proposed and are now under preparation in the United Nations.

IMPACT OF THE NEW DOCTRINE

This situation has made it necessary that we go back to the Constitution of the United States to discover the impact of the new doctrine on us.

Article VI of the Constitution provides:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

Few countries of the world have similar provisions in their constitutions, and it may be said that the United States occupies an isolated status and the way has never been found by which we can be put on an equal basis with Great Britain and many other countries in treaty law.

I have a letter from Professor Chafee of Harvard, in which he states he and Judge Hudson and Mr. Kendrick of the State Department worked for over a year to find the basis by which we can be put on an equal basis with Great Britain in treaty law. Dr. Lauterpacht, in his book on Human Rights, gave up the job entirely. He said he couldn't find a way to do it.

The situation of the United State may be summarized thus:

(*a*) In a treaty in a code form, the Senate by a two-thirds vote of the Senators present and approval by the President may impose domestic law on the United States in any form and on any subject, if there is no prohibition in the Constitution, regardless of the entire lack of any other constitutional basis.

(*b*) After ratification of a treaty and approval by the President in a skeleton or enacting form only, which does or does not provide for implementation, Congress has the power with no other constitutional basis whatsoever to pass any implementing legislation, with the approval of the President.

(*c*) The effect of the above is that a ratified treaty confers full and complete power on the Federal Government in matters dealt with by the treaty and the States are deprived of all the power in those matters notwithstanding State constitutions, State decisions and law.

IS THE ROAD TO PEACE ONE OF SURRENDER OF STATE RIGHTS TO THE FEDERAL GOVERNMENT?

This is a policy question which must be discussed. If there is to be a succession of treaties from the United Nations dealing with domestic questions, are we ready to surrender the power of the States over such matters to the Federal Government? Is that the road to peace, domestic or foreign?

We hear much of the dominant federalist state. Everything done so far has been done under the constitutional power of Congress. If no constitutional basis is necessary, and if all that is necessary is a ratified treaty, shall we make that change in our structure of government by the treaty route instead of a constitutional amendment approved by the people of the United States?

The report of the Civil Rights Committee appointed by the President, after considering the division of power over civil rights between the Federal Government and the States, in two places refers to the added power which may be given to Congress in the field of civil rights if the human-rights treaty is ratified and approved. Last year, a bill emanated from the Labor Committee of the House dealing with the entire field of civil rights. It is known as the FEPC bill. There has been much in the papers in the last few days.

It is predicated in part on the provisions of the charter of the United Nations dealing with the promotion and support of human rights generally. I have a copy of that bill and a copy of the report, and on page 24, you will find the discussion of the treaty-making power, and it said [reading]:

> So viewed, it is immaterial whether or not the bill could be unconstitutionally enacted in the absence of an enabling treaty.

The Supreme Court has established that there are some matters that an act of Congress could not deal with but that a treaty followed by such an act could, citing *Missouri* v. *Holland* (252 U. S.), which is the Migratory Bird case. In that case the Court upheld the statute regulating the killing of migratory birds, a matter normally within the exclusive jurisdiction of the States. A treaty with Great Britain providing for such regulations supplied the basis for the Court's holding that the great body of private relations usually fall within the control of the State, but a treaty may override its power.

This is a matter of pending legislation, with a comprehensive bill based in part upon the jurisdiction of Congress without constitutional basis in an important matter covering all fields of civil rights. It gives us right now, to date, the extent of the use of treaty-making law in the United States. These are constitutional processes in the United States. There is a blind spot in the Constitution. At the time it was drawn, and for years thereafter, operations were under a narrower concept of international law. The result could not have been foreseen. It has been brought to the fore by the proposed Covenant on Human Rights, the Genocide Convention, and the proposed Treaty on Traffic in Persons, commonly known as the Prostitution Treaty.

During the annual meeting of the American Bar Association in consideration of these matters, Governor Stassen joined in a suggestion of the committee on peace and law through United Nations that if the United States was called upon to consider and ratify many

proposed treaties flowing from the United Nations dealing with domestic questions, a constitutional amendment would undoubtedly be necessary to put us on a parity with other antions and to preserve the rights of the States.

Two subjects will have to be covered in that treaty instead of one: One, taking out possibly the provision that a treaty upon ratification becomes the domestic law of the land and another provision preserving the rights of the States.

There is one outstanding case in the United States by which a domestic question was turned into international law. Congress passed a migratory bird law which was declared unconstitutional because of lack of constitutional power in Congress to deal with that subject. On the advice of counsel no further action was taken until a treaty covering migratory birds was made with Great Britain and Canada. This matter then reached the Supreme Court of the United States in what is now known as the Migratory Bird case, and the power of Congress to enact the law under the treaty, with no other constitutional basis, was upheld because, as Justice Holmes said, there was no prohibition in the Constitution against it and nothing in the tenth amendment to prevent it. A comparatively simple subject made a lot of law for the United States, the effect of which we must now consider.

It will be seen that the committee on peace and law through United Nations is presenting nothing new. It is presenting a situation under our Constitution which has existed since it was drawn. Many attempts are now being made to recognize the situation. The report of the committee on peace and law through United Nations presented in September at the annual meeting of the American Bar Association has been sent to each member of the association for earnest study and consideration. Over 43,000 copies of that report were mailed out similarly for study. It is in the hands of the Senators and Members of the House.

Its substance has been presented to the American Society of International Law and to teachers of constitutional and international law at the meeting of the Association of American Law Schools.

At the last meeting of the Assembly of the United Nations, a report of Committee Three was submitted constituting a convention on the traffic in persons, generally known as the Treaty on Prostitution. Mr. Schweppe referred to the statement in the column of Mrs. Roosevelt.

We think it will be agreed that the question of prostitution hitherto has been a domestic question, treated through local regulatory measures and in the social-service fields in each separate jurisdiction of government.

The Federal-State clause referred to is article 24 of the proposed Treaty on Human Rights. Its purpose is to preserve the rights of the States. The draft is an abridgement from the International Labor Convention, under which proposals only are made to the treaty states for acceptance or rejection by them, with no binding obligation of implementation of the treaty. We believe it is now agreed that the clause as drawn will not serve the purpose.

No attempt whatsoever is made in the Genocide Convention to meet the situation, in spite of the fact that domestic law of crimes is provided for in that convention. In fact, a deliberate, premeditated attempt to enact international law for enforcement in domestic courts appears in that convention. If Mrs. Roosevelt is right in her state-

ment that the absence of the Federal-State clause probably makes it impossible for Congress to ratify the Convention on Prostitution, what shall be said of the absence of a similar clause in the Genocide Convention?

In our report, we state that the absence of such a clause preserving the rights of the States is a bar to the ratification of this treaty as submitted.

It is often said that treaties are not self-executing. In the solution of this question, there is no difference between a self-executing treaty, which does not require implementation, or one which requires implementation by the enactment of the necessary laws to put it into operation. If there is an obligation to implement a treaty, the obligation is as strong as the treaty itself. The United States does not fail to implement a treaty. If there is an obligation to pass legislation, the point is reached when such legislation is passed that the full effect of the treaty shown herein has been accomplished.

Many other questions arise in the consideration of these matters, including the right of a state which is a party to a treaty to raise the question of the constitutionality of any of its acts. Articles 13 and 14 of the proposed Declaration of the Rights and Duties of States are to the contrary, and expressly negative the idea that any state in international relations can raise any question of constitutionality. If individuals are bound by treaties, and the treaty state cannot raise the constitutionality, will the individual have the power to raise the question of constitutionality? This is of particular importance because of the provision of our Constitution which provides that the Constitution of the United States and treaties are of equal dignity as supreme law of the land. Which is supreme?

CAN THE PRESIDENT AND THE SENATE SUSPEND THE OPERATION OF THE CONSTITUTION?

Another question is: Have the Senate of the United States and the President the power to suspend the operation of a plain provision of the United States Constitution that a ratified and approved treaty becomes domestic law? Can we by a reservation say that we are suspending the operation of a plain provision of the Constitution of the United States? Will any reservations or resolutions saying that the treaty shall not have that effect stop the operation of the Constitution?

Finally, may we call attention to the evanescent and uncertain character of legislation dependent on the termination of a treaty. Great bodies of legislation may be passed under these treaties, and great agencies of enforcement may be set up. Treaties may be terminated in many ways by the President, by Congress, by repudiation and abrogation, by failure to act, or by deliberate breaches. What becomes of the laws and the machinery which have been set up? Those interested in this point are referred to Corwin—The President, Office and Power, page 238.

TREATY IS SELF-EXECUTING

Senator McMahon. Of course, you appreciate that the State Department has rendered the opinion that it is not a self-executing treaty.

Mr. Rix. Correct. We don't agree to that insofar as the definitions of the crimes are concerned. The obligation of the treaty is to

enact the legislation to put these crimes and these definitions into effect without deviation.

Senator McMAHON. That is the moral obligation under the treaty.

Mr. RIX. That is the legal obligation under the treaty.

Senator McMAHON. Well now, of course, it is important, though, to know that upon the ratification of this treaty by the Congress, by the Senate, it would not be possible to try in any court, any court in the United States, any person under that treaty.

Mr. RIX. Possibly for crimes but not, as Mr. Schweppe explained, to create a civil liability, because of our constitutional provision that all definitions of crimes, of international crimes, or all specific definitions of crimes, Federal crimes and international crimes, must be provided by Congress and not by the Senate alone. We have that provision in our Constitution.

Senator McMAHON. And, therefore, it would not be possible to hale anybody into court and put them on trial.

Mr. RIX. That is correct, for a violation of this treaty. It would have to be in violation of a specific statute, criminal statute, definite in its terms and certain in its penalties, because of our constitutional provisions.

Senator McMAHON. That is right. I think it is important that that be emphasized.

Mr. RIX. I think that is correct Senator. It should be brought out in the record.

Now, what is the application of all that to this Genocide Treaty? It is plain that there has been a severe getting down from the lofty plane which Mr. Schweppe described, taken by the United States, which we believe was correct, that genocide should embrace only those crimes which were committed with the complicity of the state.

NO CONSTITUTIONAL BASIS ON WHICH TO BIND THE UNITED STATES

In the opinion of members of the Sixth Committee, expressed in their debates, what this thing has gotten down to is a code of domestic law for each country, defining certain crimes, and that nothing more was added except a code of law, in this case treaty law, with all the consequences which I have tried to explain, without any constitutional basis whatsoever to govern the United States of America. The extensive use of that treaty power, in our opinion, constitutes a serious question for us and particularly for the minority groups which appeared yesterday and presented their side of this case so eloquently. What is the protection which has been given to them except the constitutional government of the United States anchored to the Constitution of the United States? If we destroy that system of government and embrace the British system, for instance, without a constitutional basis back of it, as they have in England, where are we?

In our opinion, the failure to recognize the constitutional situation that is confronting the United States in this treaty, as the Third Committee did in connection with the Treaty on Prostitution, is a bar to its ratification, as submitted, and the failure must be corrected in some way.

FREEDOM OF SPEECH

Mr. Schweppe explained to you the question of denial of free speech. I want to put in this record what Mr. John Maktos said in that debate, and if you want to see an illuminating debate on the question of where we stand on free speech in the world, I refer you to that debate in the Sixth Committee, where country after country disputed the contention of the United States of the absolute right of free speech. A friend of mine from Cuba appeared there, the dean of a law school. He stated that his country would not accept our concept of free speech. Mr. Maktos said that genocide must end where free speech begins. Without free speech and freedom of the press all of these rights that we talk about amount to nothing.

"IN PART"

Mr. Schweppe also discussed the question of "in whole or in part." To say that we were rather surprised to find the contention yesterday that this did not apply to part would be an understatement. Several months ago, when I spoke before the Society of International Law, it was my privilege to speak to Dr. Lemkin and Dr. Alfaro, who drafted at Paris the amendment providing for the inclusion of the words "in part," and their reasons, in my opinion, were perfectly sound, that it would be impossible to prove intent to kill the whole of a large group of people. Therefore this provision was put in in Paris after the words "in whole" had been in that proposed treaty for several years in all the drafts. No opportunity for study was had, because the treaty was signed at that meeting, and that change was made there for that purpose. I can see why many people did not recognize the difference caused by those words and why many people who had formed their opinion with regard to this Genocide Convention believed that they were dealing only with cases of mass murder instead of dealing with a code of criminal law, to become the particular law of every state and enforced by that state.

"AS SUCH"

Mr. Schweppe has also explained the use of the words "as such" under which, if you will notice carefully, every prosecution, every removal of people, any other acts which could constitute genocide behind the iron curtain, are now defined as enemies of the state. Cardinal Mindszenty is in prison because he refused to observe the laws of the state with regard to religion, and that is true of all of the acts that are now going on. It is easy to see under those words why Russia would sign that treaty with only one reservation, because none of her acts can be affected by them.

THE CONVENTION DOES NOT IMPOSE THE OBLIGATION ON THE UNITED STATES TO PREVENT GENOCIDE AROUND THE WORLD

Now we come to one that here had been practically no discussion on, and I would not discuss it today if it weren't for the fact that it is included in our report, and it seems to have been in the mind of so many people here yesterday and today.

We admit that article 8 as drawn is open to the conventional interpretation that the duty to prevent genocide would exist only in the contracting state and not outside of it. But we offer for the consideration of this committee the question as to the real meaning based upon the history back of it and as to whether or not it shall be made plain that the only duty of the United States to prevent genocide shall be within its own territory. I think it must be made plain in order that people, many of whom have sought asylum here, telling us the stories that they told this morning, do not become imbued with the idea that this treaty imposes the obligation on the United States to prevent genocide around the world.

We are told now by the representatives of the Jewish World Council that article 8 means nothing whatsoever, that it wasn't taken seriously, in spite of the fact that they have been working on it for 2 years.

Mr. Finch will conclude with things which I have not taken up. Thank you very much.

Senator McMAHON. I might add, Mr. Rix, that Mr. Fisher, counsel for the State Department, mentioned to me that they would like to be heard to answer your presentation and that of Mr. Schweppe and, I assume, that of Mr. Finch, and that opportunity will be accorded to them. I hope you can be present when the answer is made.

STATEMENT OF GEORGE A. FINCH, MEMBER, SPECIAL COMMITTEE ON PEACE AND LAW THROUGH UNITED NATIONS OF THE AMERICAN BAR ASSOCIATION

Mr. FINCH. I am a native Washingtonian, Mr. Senator, but live in Maryland.

THE COMMITTEE ON PEACE AND LAW THROUGH THE UNITED NATIONS

In view of the unjustified attacks upon the American Bar Association because of the considered criticism of the Genocide Convention made by the association's special committee on peace and law through United Nations, I wish emphatically to deny that the bar association or this special committee has, or is conducting any campaign against the Genocide Convention or against the outlawing of genocide as a crime under international law in the true meaning of the term "genocide" and as the public understands it to mean. We are performing what we consider to be a duty of the legal profession, as well as a patriotic service, in bringing to the attention of the Senate the views of a great body of American lawyers upon the real meaning and interpretation of a treaty the Senate has been requested to approve.

The special committee of the bar association has been in existence for a number of years and was established for the specific purpose of cooperating in the maintenance of peace through law, which objective I humbly submit is the only method by which peace can be justly maintained. Each year for several years, the special committee has taken up different subjects for consideration and has held regional group conferences on them by members of the bar in many cities and section of the United States. The consensus of the groups was later formulated and reported to the Ameriacn Bar Association.

REGIONAL CONFERENCES

During the preceding year, regional group conferences were held on the proposed Covenant on Human Rights and the Genocide Convention. These subjects were fairly presented from all angles and representatives of the State Department and the Department of Justice were invited to attend, and did attend some of the conferences, at the expense of the American Bar Association. They had every opportunity to present their views to the lawyers of the country. The report of the special commitee on the Genocide Convention was made to the last annual meeting of the America Bar Association held in St. Louis in September last. It was thoroughly debated by the house of delegates and those opposed to the recomendation of the special committee were given full time to state their views. The opposition to the special committee's recomendation was led by the Solicitor General of the United States. In spite of everything said against the special committee's report, its recommendation that the Genocide Convention as submitted to the Senate be not approved was overwhelmingly adopted by the house of delegates.

CONVENTION BEING MISREPRESENTED AND OVERSOLD

Yesterday, before this subcommitee, in the criticism leveled against members of the special committee by those urging the ratification of the Genocide Convention as submitted, it was charitably suggested that while our members are, no doubt, honest and sincere, their attitude was probably due to a latent and subconscious allergy to international cooperation for the promotion of peace. I wish to assure this subcommittee that I am not only not allergical to international cooperation for this purpose, but have spent substantially all of my life in seeking to promote it by practical and rational means. I believe that accomplishments in this field have been retarded by the overselling to the public of the results and accomplishments of international conventions and conferences. The Genocide Convention as submitted to the Senate, is an outstanding example of an international agreement upon which the public has been and is being misinformed.

As genocide is defined in the convention, it does not apply to the mass killing and destruction of peoples by totalitarian governments, but appeases such governments by making it possible for them to continue as they are doing today behind the iron curtain, without the possibility of bringing legal or moral charges against them for violating this convention, even if they had ratified it, the monstrous treatment of thousands of human beings whom those governments regard as enemies of the Communist states, the same as Hitler and his conspirators treated certain groups in Germany and in occupied countries as the enemies of nazism. The present convention accordingly frustrates the wishes of all civilized people who sincerely believe that genocide as thus truly understood should be outlawed by international law. There is not a word in the convention which denounces as genocide the mass killing and destruction of peoples by governments. The only article in which the responsibility of a government is mentioned is article IX, and as to that article the Secretary of State has recommended that the Senate insert an "understanding" in its resolution of approval relieving the United States Government from respon-

sibility, except, as I shall later point out, its responsibility under the rules of international law already binding upon it and for which no no new convention is necessary.

TREATIES UNDER THE CONSTITUTION

With the exception of the matters referred to in the following two paragraphs I make no argument that this convention is unconstitutional. My criticism is based upon the effect of treaties upon our State laws and constitutions and of the recognized rule of international law that domestic matters become matters of international concern when treaties are made on such subjects. I am opposed to the continuance of the policy made possible by the decision of the Supreme Court of the United States in the case of *Missouri* v. *Holland* (252 U.S. 416) of transferring State powers to the Federal Government through the exercise of the treaty-making power as a method of amending the Constitution. I am also opposed to the policy of nullifying article II, paragraph 7, of the Charter of the United Nations which expressly prohibits that organization from intervening in matters which are essentially within the domestic jurisdiction of the country by making treaties with other nations on subjects which are now and ought to remain within our domestic jurisdiction in accordance with the constitutional distribution of powers between the States and the Federal Government. On the effect of treaties relating to matters of domestic concern, see the opinion of the Permanent Court of International Justice at The Hague in the Tunis-Morocco Nationality Decree case, Hudson, World Court Reports, volume I, page 143.

INTERNATIONAL PENAL TRIBUNAL

Article VI of the convention provides that persons charged with genocide shall be tried by a competent tribunal of the state or the territory in which the act was committed. This is an eminently proper provision and I would make no further comment upon this article had it ended here; but this article continues "or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction." It is argued that since there is no international penal tribunal now in existence, and since the United States does not propose to accept the jurisdiction of such an international tribunal should one be established, the proposal of this alternative procedure for the punishment of persons charged with genocide is innocuous to this country. This argument fails to take into consideration the statement of an official representative of the United States in the Sixth Committee of the General Assembly of the United Nations at Paris, October 14, 1948, in which he gave this pledge to the other nations taking part in that meeting:

> The United States delegation intended, at a later stage, to show the need for the establishment of an appropriate international tribunal.

Records of the third session of the General Assembly, part 1, page 103; quoted in the report of the special committee for peace and law through United Nations, page 12.

How can it be seriously argued that if the United States proposes to establish an international penal tribunal, as promised by its official representatives at Paris 2 years ago, the Government of the United

States will not be bound to make a bona fide attempt to become a party to such international tribunal. Any proposal to send for trial without the limits of the United States any person charged with crime committed within the United States would be clearly unconstitutional. This method of punishing the colonists was one of the particulars of complaint made against King George III in our Declaration of Independence: "for transporting us beyond seas to be tried for pretended offenses." When our forefathers obtained their liberty from this and other acts of tyranny, they sought to ban forever that method of punishment by providing in article VI of the Bill of Rights that : "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

In order that my objection thus stated to the establishment of an international court may not be misunderstood, I would like to emphasize that what I have just said on that subject refers only to the proposal to establish an international penal tribunal before which individuals committing crimes in this country may be personally tried. If the Senate of the United States had before it a convention outlawing genocide committed by governments or with governmental connivance or acquiescence, which is the true meaning of the term and which the public thinks is being outlawed by the convention now before the Senate, I would gladly appear before you and as earnestly urge the approval of such a treaty as I am now as earnestly urging the Senate not to ratify the present treaty as submitted. I agree with the proponents of the present treaty who have repeatedly stated before you that genocide properly defined has never occurred in the United States and I am confident it never will; but I am not willing by the ratification of the present treaty to give the enemies of our form of government abroad and its critics at home any foundation to argue that our Bill of Rights and our State constitutions and laws for the protection of individual rights are not adequate or are being so administered as to stigmatize us with the commission of the crime of genocide while under the same convention the accusing governments may not be charged with genocide in its true sense. I would like to see the United States Government take the leadership in proposing the outlawry of genocide when committed by governments as a matter of policy or by their connivance or acquiescence. I would also like to see included in the same convention, a commitment by the signatories to prevent and punish that kind of genocide within their territories whether committed by public officials, private individuals, or groups of individuals.

Moreover, I would be willing that any serious charges against our Government by any other contracting power of serious violation of such undertakings be submitted to the International Court of Justice at The Hague without reservation of any kind. I say this because I am confident that genocide as the world understands that term to mean will never be committed in this country; but if, unfortunately, our moral and legal standards should so deteriorate that we are open to the charge of following the example of Hitler and Stalin, we should be willing to submit the decision of such a charge to the bar of international justice and world opinion.

DEFINITION OF GENOCIDE INADEQUATE TO MEET THE SITUATION

The crux of the criticism of the convention now before the Senate is the definition of genocide contained in article II. The first paragraph of that article reads: "In the present convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such." Article IV limits the application of the convention to persons committing genocide. We are accordingly at the outset met with a bar against accusing governments, totalitarian or otherwise, of genocide. In this respect the convention is a departure from the approach to the crime of genocide with which the United States Government started the negotiations which led to the signature of the convention. As will be seen from the proceedings of the Ad Hoc Committee of the Economic and Social Council of the United Nations, the representative of the United States in that Committee insisted that genocide could not exist except with governmental approval, connivance, or acquiescence. For reasons best known to our own Government officials, this approach was later abandoned and we are now presented with a convention dependent for its efficacy upon the punishment of individuals in national courts.

Furthermore, the convention provides that these acts of individuals shall be committed with intent to destroy a protected group "in whole or in part." The question immediately arises, Is the killing by an individual of one or two members of a group with intent to destroy those members as part of the group, regarded as genocide? In order to meet this difficulty, some of the proponents of the convention now seek to escape it by arguing that the intention must be to destroy the whole group. This is equally untenable. How could an individual or group of private individuals undertake to destroy a whole national, racial, ethnical, or religious group within the country without governmental approval, connivance, or acquiescence?

Moreover, article II enumerates a series of acts of genocide, including "mental harm to members of the group." Can it be successfully denied that segregation laws are susceptible of being denounced as causing mental harm to all members of the group against which such laws discriminate? Minority groups in this country are now vigorously seeking to have such discrimination abolished by Federal legislation. Can there be any reasonable doubt that if Congress fails to enact the civil-rights laws now being urged upon it and if this convention is ratified as submitted, members of the affected groups will be in a position to seek legal relief on the ground that this so-called Genocide Convention has superseded all obnoxious State legislation? By the United States Constitution, treaties are "the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." (Art. VI, sec. 2):

DEFINITION DOES NOT COVER ACTS OF THE TOTALITARIAN GOVERNMENTS

The nonapplicability of the convention to crimes of genocide now being committed by totalitarian governments behind the iron curtain is further emphasized by the requirement of article II of the convention that acts of genocide can be committed only against a national, ethnical, racial, or religious group, as such. The inhuman treatment

now being administered to members of these groups behind the iron curtain is said to be, not because they belong to any of the groups protected by the Genocide Convention, but because they are enemies of the state or dangerous to its security. The omission of political groups from the definition of genocide in the convention has made this evasion possible. The original resolution on genocide of the General Assembly of the United Nations dated December 11, 1946, included the protection of political groups but such groups were omitted from the convention as it is now before the Senate. The effect of this omission and of the nonapplicability of the convention to governmental acts was shown in a letter sent to the Secretary General of the United Nations in September 1949, by the American Jewish League against Communism, protesting against the deportation of 400,000 Jews from the Ukraine and White Russia to Archangel and Siberia because they were considered too prodemocratic to be left on the Soviet borders in case of war. See New York Times, September 15, 1949, page 24. The futility of the convention to offer any protection against such cases of real genocide is further substantiated by the report of the New York Times correspondent in Washington of October 17, to the effect that the State Department has received confirming reports that Russia is carrying out the mass deportation of Greeks and other non-Russians from the Caucasas area. See New York Times, October 18, 1949. Moreover, an Associated Press dispatch from Berlin of January 21 of this year, reports that about 24,000 persons have died in the Buchenwald concentration camp since it has been operated by the Soviets for political prisoners.

Of what avail to any of these poor unfortunate people will be this convention on genocide under which the only possible effective sanction will be the punishment of individuals by national courts? What can a national court in a country behind the iron curtan do to prevent genocide as defined in this convention? What real protection could the court of any country provide if an independent judiciary does not exist?

ARTICLE IX

The only other article of the convention upon which I desire to comment is article IX. This article provides that—

> disputes between the contracting parties relating to the interpretation, application, or fulfillment of the present convention, including those relating to the responsibility of a state for genocide * * * shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

The Secretary of State has requested the Senate to insert a qualifying understanding that this article shall be understood—

> in the traditional sense of responsibility to another state for injuries sustained by nationals of the complaining state in violation of principles of internatonal law, and shall not be understood as meaning that a state can be held liable in damages for injuries inflicted by it on its own nationals.

The effect of this understanding would be to relieve the United States Government of responsibility under the convention for damages to its own citizens. No such liability would exist without the convention. The understanding would retain the liability of the United States Government for damages to aliens in this country. Such a liability now exists under international law and no convention is necessary. Article IX obviously would be interpreted by the courts

to include civil liability of individuals for violations of the convention. The reservation proposed by the Secretary of State does not touch the question.

The United States is already a party to the statute of the International Court of Justice and to the optional clause contained in article 36 of the statute which confer jurisdiction upon the Court in such legal disputes as might arise under the Genocide Convention. The United States acceptance of the optional clause contains the so-called Connally reservation that in the event of a dispute as to whether the International Court has jurisdiction, the matter shall be settled by the United States and not by the Court. Article IX of the Genocide Convention is not necessary to confer jurisdiction upon the International Court. Its acceptance without further reservation than that recommended by the Secretary of State would serve to eliminate the Connally reservation from disputes arising under the Genocide Convention. We do not discuss at the present time whether or not the Connally reservation should be retained; that question should be discussed on its merits, but the reservation should not be bypassed collaterally in the convention now before the Senate.

The United States Government ratified the Charter of the League of Nations with the provision in article II, paragraph 7, that the Charter should not apply to domestic questions. The protection of civil rights and the suppression of crime within the territory of a state are universally considered as questions within its domestic jurisdiction. In the United States they are primarily within the jurisdiction of our States. When a government enters into treaty relations with another government or governments on a subject within the domestic jurisdiction, such subject ceases to be a matter solely of domestic concern and becomes a matter of international concern. See the case of the Tunis-Morocco Nationality Decrees cited. By entering into the Genocide Convention on subjects which fall within the protection of civil rights or the police power of the States or the Federal Government, the United States will be subjecting its domestic jurisdiction to the concern, not only moral but legal, of the other contracting governments; and be thereafter subject to diplomatic interposition and other procedures established for the settlement of international disputes. The ratification of the present Genocide Convention will raise to the level of an international question many questions now reserved to the domestic jurisdiction. It is submitted that such a result will not be in the interest of preserving peace but of creating additional frictions which might lead to war.

CONVENTION OF NO USE IN THE COLD WAR

It is argued that the ratification of this convention as submitted will aid the Government's policy in the cold war. As pointed out, the Communist world has already won its cold war against the western powers with respect to the punishment of genocide. The convention as submitted could not be more perfectly drafted to enable the totalitarian governments to proceed against their minority groups the same at Hitler did. The convention is supposed to implement the Charter of the United Nations which requires the members to promote universal respect for and observance of human rights and fundamental freedoms, article 55. The convention will actually weaken the protection now provided in the Charter.

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Also, it is argued that the ratification of the convention will prevent future war criminals from pleading, as they did at Nuremberg, that there was no law on the subject of genocide. This argument is one of despair. The purpose of the Genocide Convention is to assist in preventing future war. If its effect is not to be felt until after another world war has been fought and won, then, I submit, we are wasting our time in discussing it.

CONVENTION OF NO VALUE IN THE UNITED STATES

As previously pointed out, it is argued that the convention will have no application to the United States because genocide has never been committed in this country and it is hoped never will be. In view of the patent futility of the convention to prevent the mass destruction of peoples in countries with totalitarian governments, if the convention has no real application to the United States, as asserted, no reason remains why the Senate should run the risk of having the convention interpreted, if not by us then by one or more of the other contracting powers, as being applicable to domestic questions in the United States.

In former years it was the practice of American delegates to international conferences to decline to sign international conventions which would or might require the Federal Government to assume responsibility for matters falling within the jurisdiction of States of the Union, or to attach appropriate reservations safeguarding the rights of the States. I refer particularly to the code of private international law adopted in treaty form by the Sixth International Conference of American States held at Habana early in 1928. This treaty contains international commitments on many phases of law and procedure affecting the private lives of the people. It covers such matters as marriage and divorce, real and personal property rights, contracts, wills, negotiable instruments, sales, penal law, and many other subjects. As to that convention, the delegation of the United States—

> found it impossible to vote on the code and thereby treat of questions which were of a domestic character and pertained to the jurisdiction of the 48 States, which had their special internal regulations on these matters (Diario de la VI Conferencia Americana Internacional, Habana, 1928, p. 92 (translation)).

The Genocide Convention is the beginning of a series of treaties which the Senate will have to consider involving wider participation by the United States in international cooperation. As my colleagues on this committee have already pointed out, no attempt has been made in this treaty to safeguard the jurisdicion of the states over common-law crimes and civil responsibility resulting therefrom where such crimes may also constitute genocide under this convention. In that respect I regard the Genocide Convention as a further attempt on the part of the Federal Government to increase its power at the expense of the States.

I would like to give the ladies in the audience a bit of free legal advice, should the Senate put its approval upon this form of Federal legislation by treaty. Some of their organizations are now trying to get the Congress to agree to an amendment to the Constitution giving them what they call equal rights. Should that amendment pass the Congress and its backers be unable to obtain its ratification by the State legislatures, as required by the Constitution, then they would

have an easier method of making it the law of the land by having the United States Government enter into a treaty on that subject. Such a treaty is already in existence for several Latin-American Republics. It was signed during the Seventh International Conference of American States held at Montevideo in 1933.

I thank you, Mr. Chairman, for your consideration in letting me speak at this length and letting me get some things off which I think you ought to consider in connection with this convention.

Senator McMAHON. Thank you, sir.

Our next witness is Leander H. Perez, district attorney of Louisiana.

STATEMENT OF HON. LEANDER H. PEREZ, DISTRICT ATTORNEY OF LOUISIANA

Judge PEREZ. Mr. Finch, who just preceded me, covered much of the analysis of the proposed so-called Genocide Convention which I had intended to cover, and which is included in my prepared statement, which I ask leave to file and have copied verbatim in the record.

Senator McMAHON. It will be done.

(The statement of Judge Perez is as follows:)

STATEMENT BY LEANDER H. PEREZ, DISTRICT ATTORNEY OF LOUISIANA, AGAINST RATIFICATION OF THE GENOCIDE CONVENTION

The Senate has been requested to ratify a United Nations Genocide Convention which calls for the punishment of individual citizens of a state for the newly defined crime of genocide, and which, if ratified, would compromise our system of constitutional government and would internationalize matters which are solely within our domestic jurisdiction.

At the same time, this Genocide Convention would not make any contracting party, or government, responsible for genocidal crimes committed by it against its own nationals; nor would it add to the existing responsibility of any government for genocidal acts committed by or at its instigation or with its complicity against nationals of a foreign state.

Therefore, this proposed Genocide Convention is nothing more than rank meddling with our domestic affairs, and is a violation by the United Nations of the article of its Charter which prohibits it from "intervening" in matters which are essentially within the domestic jurisdiction of any state.

THE EXECUTIVE MESSAGE

On June 16, 1949, the President delivered a message to the Senate urging ratification of the International Convention on the Prevention and Punishment of the Crime of Genocide, and submitted an explanation of the Acting Secretary of State in support thereof (81st Cong., 1st sess., Senate Executive O).

The report condemns the genocidal acts of the Nazi Government, and cites that "disintegration of the mind caused by the imposition of stupefying drugs may destroy a group"—evidently referring to such well-known acts recently committed by the Communist Governments of Europe in their so-called treason trials.

But this horrifying build-up for support of this Genocide Convention is shown by the report itself to be entirely irrelevant and immaterial.

GOVERNMENT'S NATIONALS UNPROTECTED

When the representative of the United States voted in favor of the Genocide Convention in the United Nations General Assembly, he made the statement that if "responsibility of a state" for genocide or any of the other acts enumerated in article III is not used in the traditional sense and if these words are intended to mean that the "state can be held liable in damages for injury inflicted by it on its own nationals, this provision is objectionable and my Government makes a reservation with respect to such an interpretation." Then the Acting Secretary, with the endorsement of the President, recommended to the Senate that it ratify the Genocide Convention "with the understanding that article IX shall be

understood in the traditional sense of responsibility to another state for injuries sustained by nationals of the complaining state in violation of principles of international law, and shall not be understood as meaning that a state can be held liable in damages for injuries inflicted by it on its own nationals." (See p. 6, Executive O.)

Therefore it is clear that the Genocide Convention is not aimed at governments which may commit genocide against their own nationals. Furthermore, under established international law, governments are and have been responsible to other states for killings or injuries of their nationals in violation of the principles of international law.

International law applies to nations and governments in their international relations.

Further, all members of the United Nations are ipso facto parties to the statute of the International Court of Justice, which has jurisdiction to decide controversies between them in accordance with the general principles of law recognized by civilized nations.

Article 93 of the United Nations Charter, clause 1, provides:

"All Members of the United Nations are *ipso facto* parties to the Statute of International Court of Justice."

The statute of the International Court of Justice, article 38, section 1, provides:

"The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: * * * c. the general principles of law recognized by civilized nations; * * *"

GENOCIDE INTERNATIONAL CRIME

The fact is that all civilized nations, members of the General Assembly of the United Nations, have recognized "that genocide is a crime under international law," by its adoption of resolution 96 (I) dated December 11, 1946. (See p. 7, Executive O.)

Therefore, we see that genocide has been recognized as a crime under the general principles of law recognized by civilized nations.

So, what would be the purpose of the Senate ratifying this Genocide Convention, when, first, genocide under general principles of law recognized by all civilized nations is an international crime, and, secondly, the International Court of Justice has jurisdiction to adjudge against states through whose governmental policy or complicity genocide may be committed? Surely the ratification by the United States Senate of this proposed Genocide Convention, with the recommended reservation that it would not make a state or government liable for injuries inflicted by it on its own nationals, could add nothing to the international crime of genocide.

GENOCIDE CONVENTION AGAINST PERSONS

It is plain that the whole purpose of the proposed Genocide Convention is to make the international crime of genocide apply to individuals and thereby to intervene in matters which are essentially within the domestic jurisdiction of the state.

Article I of the proposed Genocide Convention confirms what the United Nations General Assembly has already sufficiently declared by its resolution 96, that genocide "is a crime under international law"; articles II and III define the crime of genocide, and article IV limits the commission of the crime to persons (not states or governments), and article V provides:

> "The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III."

Regarding article II defining genocide, including the killing or maiming, or causing mental harm to, any member of any national, racial, or religious group, the United States representative on the United Nations Legal Committee said: "However, if an individual is murdered by another individual, or by a group, whether composed of private citizens or government officials, as part of a plan or with the intent to destroy one of the groups enumerated in article II, the international legal crime of genocide is committed as well as the municipal-law crime of homicide" (p. 4, Executive O).

The purpose, therefore, of this proposed Genocide Convention adopted by the United Nations is to extend the international crime of genocide to the individual citizens of a state.

UN VIOLATED ITS CHARTER

Bear in mind that article II, paragraph 7 of the United Nations Charter specifically provides that nothing contained in that Charter "shall authorize it to intervene in matters which are essentially within the domestic jurisdiction of any state." Therefore, it is plain that by the United Nations proposing such a Genocide Convention to operate against citizens of the state, or to interfere in local law enforcement within a state, which is essentially within the domestic jurisdiction of the state, is nothing more nor less than rank intermeddling in the domestic affairs of the state, and is a violation of the specific provision of the United Nations Charter.

Therefore, how can the United States Senate be asked, or urged, to ratify this so-called Genocide Convention which is a direct encroachment on the domestic affairs of this country under the Constitution of the United States, in face of the fact that adoption by the United Nations of this so-called Genocide Convention is a flagrant violation of one of the solemn provisions of its own Charter, or a violation of that part of the international agreement by which the United Nations came into being?

The fact that the Acting Secretary points out (p. 3) that this so-called Genocide Convention was prepared under the chairmanship of the United States representative and that the United States delegation played an important role in the formulation of the convention, offers no alibi for the violation of the United Nations' Charter provision in article II, paragraph 7, that the United Nations shall not interfere or meddle in domestic affairs of member states.

The American members should have known better. They should have been duly respectful of the provisions of our Constitution under which the municipal sovereignty of law enforcement is reserved to the individual States of the Union and not to the National Government, such as would result if this so-called Genocide Convention were ratified by the Senate and would become the supreme law of the land. If such convention as submitted were ratified, it would become the supreme law of the land and would displace State constitutions and laws wherever they may conflict with the broad provisions of the convention.

TREATIES UNDER FEDERAL AUTHORITY

The United States Constitution provides, in article VI, clause 2: "that all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Article III, section 2 of the Constitution provides that "the judicial power of the United States shall extend to all cases arising under treaties made, or which shall be made, under authority of the United States."

The United States would become a contracting party if the Senate should ratify the Genocide Convention.

Under a decision of the United States Supreme Court in the case of *Missouri* v. *Holland* (252 U. S. 416), the conclusion of a treaty by the Federal Government confers upon it authority in fields of action reserved to the States which the Federal Government would not have without such a treaty.

The ratification of the Genocide Convention, as submitted, would therefore confer upon the Federal Government jurisdiction which it does not now possess under the Constitution, and likewise deprive all States of the Union to the same extent of their jurisdiction, police powers, and the right of law enforcement in any cases which might be claimed to be "genocide," or crimes or offenses committed against any person or persons of a national, ethnical, racial, or religious group, whether it be homicide, mayhem, assault, libel or slander, or other mental harm to person or persons of any such group (art. II).

BROAD FIELD INVOLVED

It must be noted in this regard, and should not be overlooked, that the crime of genocide applies to all persons regardless of whether he is of the same national, ethnical, racial, or religious group.

In other words, the crime of genocide is not limited to a crime committed against persons of different national, ethnical, racial, or religious groups, but to any individual of any such group, even when committed by one or more persons of the same groups.

Therefore, if the Senate should ratify the Genocide Convention and make the United States a contracting party thereto, a vast area of police powers and criminal law enforcement would be transferred from the State and local governments under State laws, to the National Government under laws to be enacted by Congress and unforced solely through the Federal courts.

Thus, at one fell swoop a large part of the municipal sovereignty reserved to all the States of the Union over the domestic affairs of their citizens and their police powers and law enforcement authority would be supplanted.

If this ever comes to pass, then State and county criminal judges, prosecutors and law enforcement officers would become largely unnecessary, and they might as well be supplanted by the Federal police, prosecutors, and courts.

CONSTITUTION INVOLVED

Every member of this committee and of the Senate and Congress well knows that the Bill of Rights was adopted as amendments to the United State Constitution promptly after its adoption by the American people, and that the States entered into the compact to create the United States Government with a solemn understanding that the States, or the people of each State in heir collective sovereign capacity, would retain their right of self-government, regulation of law enforcement in regard to their domestic and personal affairs, and that these powers of government specifically were not granted to the United States.

The provision for control of their own internal affairs was the chief concern of the States in their constitutional convention which wrote the United States Constitution in 1787 and they were careful to delegate to the United States Government only those powers which were deemed necessary to enable it to perform the functions of a central government which were beyond the powers of a single State, such as military operations, interstate and foreign commerce, and foreign affairs.

So, to make the position of the States and their people more secure, the Constitution was ratified by the various States, with reservations which were later embodied in the Bill of Rights, including the tenth amendment which reserved to the States, or the people thereof, all rights and powers not delegated to the National Government nor prohibiated to the States.

After the adoption of the fourteenth and fifteenth amendments, there were those who contended for the United States Government, that its authority had been extended over the legal rights of individual persons, but the United States Supreme Court held in various cases (*U. S.* v. *Cruikshank*, 92 U. S. 589(1876) to a late case, *Adamson* v. *California*, 302 U. S. 319 (1947)) that while the fourteenth amendment protected citizens of the United States against any State violation of their civil rights, individual invasion of individual rights was not the subject matter of the amendments, and they did not invest Congress with power to legislate upon subjects which were within the domain of State legislation or to create a code of municipal law for the regulation of private rights as between individual citizens.

In Volume 109 United States Reports at page 18 (1893), the United States Supreme Court held that:

"Such legislation by Congress cannot possibly cover the whole domain of rights appertaining to life, liberty, and property, defining them and providing for their vindication. That would be to establish a code of municipal law regulative of all private affairs of man and society. It would be to make Congress take the place of all State legislatures and to supersede them.

"It is repugnant to the tenth amendment of the Constitution, which declares that powers not delegated to the United States by the Constitution nor prohibited by it to the United States are reserved to the States respectively or to the people" (p. 24).

Thus what has been prohibited to the Federal Government, is attempted through the route of the so-called Genocide Convention which plainly is not aimed against a repetition of the genocide horrors of the Nazis during the last war, nor of the reported liquidation of many thousands of Russians and of other nationals by their own governments behind the iron curtain—all of which would be exempted from the Genocide Convention, according to the reservation made by

the representative of the United States Government when voting to adopt the Genocide Convention, and by recommendation of the President and Acting Secretary of State in the message submitted to the Senate, because the ratification would leave a Government's own nationals unprotected.

WOULD COMPROMISE CONSTITUTIONAL GOVERNMENT

We submit that the only effect of the ratification by this Senate of the Genocide Convention would be to make the United States a contracting party so as to give the Genocide Convention the effect of an international treaty and under article VI of our Constitution, would make it the supreme law of the land and under article III, section 2, would extend the judicial power of the United States to all criminal cases which could be put in the category of "genocide" and would effectively annul all applicable State criminal laws, the police powers and the right of law enforcement by all the States of the Union, in any of the kindred crimes under which the broad mantle of the so-called Genocide Convention could be thrown, and would in large measure repeal the tenth amendment of the United States Constitution.

Thus, the ratification of the Genocide Convention would most seriously compromise our system of constitutional government prevailing in the United States. It would displace State constitutions and laws wherever they may conflict with the provisions of the convention, which is very, very broad because it applies to all persons of whatever national, ethnical, racial, or religious group, without exception. It would convert the simple misdemeanor of slander or libel which causes mental harm to any person of any national, racial, or religious group into the category of the international crime of genocide just as it would all physical crimes whether of assault, mayhem, or homicide, which now are all covered by the common law or State criminal codes.

We should bear in mind that, with the exception of France, the United States is the only Nation in the world whose constitution provides that its treaties (or conventions) are included among the supreme law of the land on the same basis as provisions of the Constitution and acts of Congress pursuant thereto. Certainly we are not committed to destroying our constitutional form of government nor of destroying the reserved right of States and their people to the right of self-government, police powers, and law enforcement by any international commitment assumed in the charter of the United Nations. To the contrary, article II, paragraph 7 of the United Nations Charter specifically provides that nothing contained in that charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State.

VIOLATES SENATE RESERVATIONS

It is pointed out in editorial comment of the American Journal of International Law, volume 43, October 1949, at p. 735, that when the Government of the United States accepted the compulsory jurisdiction of the International Court of Justice under article XXXVI of the statute, the Senate attached the Connally reservation which retained for the United States the determination of whether or not a matter is within its domestic jurisdiction. The Genocide Convention bypasses this reservation, as well as the Vandenberg reservation relating to the interpretation of multilateral treaties, and confers jurisdiction upon the International Court of Justice in all disputes relating to the interpretation, application, or fulfillment of the convention at the request of any party to the dispute (article IX).

Therefore, it should be remembered in this connection that, according to an advisory opinion of the Permanent Court of International Justice, a matter solely within the domestic jurisdiction of a State becomes a matter of international concern when a treaty is entered into on that subject. This principle of international law must not be overlooked if we are to maintain the internal enforcement of our constitutional rights without risk of alien interference or submission to an international appellate jurisdiction.

For the above and other reasons which will be submitted by representatives of the American Bar Association and other opponents of the Genocide Convention, we therefore respectfully submit:

1. That this committee report unfavorably on the matter of ratification of the Genocide Convention by the United States Senate;

2. That the United States Senate refuse to ratify the Genocide Convention; and

3. That the committee and the Senate suggest to the United Nations that the crime of genocide, properly defined, is inherently one committed by or at the instigation or with the complicity of a foreign state which already has been declared to be a crime against international law; that this proposed Genocide Convention adds nothing to the responsibility of governments, or states in their international relations, but is only an attempt to inject the United Nations in the domestic affairs of member states, in violation of article II, paragraph 7, of the United Nations Charter.

Judge PEREZ. Mr. Chairman, the Senate of the United States is asked to ratify what is called a Genocide Convention by an Executive message called Executive O of the Eighty-first Congress, first session.

In the message, the President endorsed the recommendations of the Acting Secretary of State, which was made a part of his message, and I submit, Mr. Chairman, that a study of the report of the Acting Secretary of State, Mr. Webb, and a careful reading of this so-called Genocide Convention will show that what the Senate is asked to ratify is a convention which calls for the punishment of individual citizens of any contracting party or nation for the international crime of genocide and which, if ratified by the Senate, would compromise our system of constitutional government and would internationalize matters which are solely within our domestic jurisdiction, and that this so-called Genocide Convention would not make any contracting party, nation or government, responsible for genocidal crimes committed by it against its own nationals, nor would it add anything to the existing responsibility of any government or nation for genocidal acts committed by or at its instigation or with its complicity against nationals of a foreign state, because they are already responsible for such acts, Mr. Chairman.

This so-called Genocide Convention is submitted by formal action of the United Nations General Assembly, which came into being as a result of an international agreement represented by the Charter of the United Nations, and article 2, paragraph 7, of that Charter specifically prohibits the United Nations from intervening in any of the domestic affairs of any of the member states. Therefore, this so-called Genocide Convention, which seeks to bind the member states or nations to enact a criminal code or domestic laws with reference to genocide, is a specific act in violation of its own Charter, and the United Nations by its submission of such a so-called Genocide Convention doesn't come into court with clean hands but as a violator of their own Charter.

We have heard many serious, sincere advocates of the ratification of this Genocide Convention. I heard an estimable lady yesterday, Mrs. Sibley, who represented the Council of Church Women, and she dramatically related how she had seen in Frankfurt tables loaded with jewelry and gold teeth taken from victims of the Nazi concentration camp at Dachau. Those were jewelry and gold teeth taken from nationals of the Nazi government, and even if this so-called Genocide Convention had been in effect by international treaty at the time, the Nazis would not have been covered. The Nazi government would not have been responsible for the wholesale horrible mass murders. They are specifically exempted.

Reference has been made, too, to the shocking crimes, the mass deportations in Russia, the uncivilized, the torturous persecutions of ministers and archbishops after the use of drugs to destroy their minds. Not only were such atrocities against those religions not been covered

by this so-called Genocide Convention but, as a matter of fact, I submit to you, Mr. Chairman and to the Senate of the United States, they are specifically endorsed and condoned, and I will read you, sir, from the very message of the President and the report of the Acting Secretary of State, so that when Mrs. Sibley asked, after her very dramatic presentation of the Nazi horrors, and she said, "My children asked me today who in this country was in favor of genocide," and she said, "I told them just a few lawyers." If Mrs. Sibley had read carefully the President's message and the report of the Acting Secretary, she would have answered to the question, "Who is in favor of such genocidal acts by the Nazis against their own nationals," sir, she would have said, the President and the Acting Secretary, Mr. Webb.

In his official report, and let me read you from it: First, it is recited by the Acting Secretary on page 6 of this official document, Executive O, that on December 2, 1948, in voting in favor of the Genocide Convention, the representative of the United States made the following statement before the Legal Committee of the General Assembly, and I quote, and that passage, sir, is in fine print [reading]:

I wish that the following remarks be included in the record verbatim: Article IX provides that disputes between the contracting parties relating to the interpretation, application or fulfillment of the present convention, "including those relating to the responsibility of a state for genocide or any of the other acts enumerated in article III," shall be submitted to the International Court of Justice. If "responsibility of a state" is used in the traditional sense of responsibility to another state for injuries sustained by nationals of the complaining state in violation of principles of international law and similarly, if "fulfillment" refers to disputes where interests of nationals of the complaining state are involved, these words would not appear to be objectionable. If, however, "responsibility of a state" is not used in the traditional sense and if these words are intended to mean that a state can be held liable in damages for injury inflicted by it on its own nationals, this provision is objectionable and my Government makes a reservation with respect to such an interpretation.

There, the official representative of the United States, voting in the United Nations, said, in effect, the great Government of the United State condones and endorses the Nazi atrocities, the Russian liquidation of hundreds of thousands of Jews and other unfortunate free-thinking people in the Russian state, and what is the official recommendation of the Secretary of State, endorsed, I submit, by the President of the United States, and I read again from page 6, and I quote:

In view of this statement, I recommend that the Senate give its advice and consent to ratification of the convention—

and dashes, and then in fine type:

with the understanding that article IX shall be understood in the traditional sense of responsibility to another state for injuries sustained by nationals of the complaining state in violation of principles of international law, and shall not be understood as meaning that a state can be held liable in damages for injuries inflicted by it on its own nationals.

That is why I refer to this as the so-called Genocide Convention. It is a sham and a farce and the propaganda that has been made which has been spread to sell these poor, well-thinking people of the United States to support it is the rankest piece of hypocrisy practiced on the people of this country.

What is the real purpose of this so-called Genocide Convention, sir? Why is it reported again officially by the Acting Secretary and endorsed by the President?

On page 3, sir:

> Pursuant to this resolution, a draft convention on genocide—

This was prepared by the Ad Hoc Committee on Genocide in the spring of 1948, under the chairmanship of one of the United States representatives on this committee. This draft was again discussed by the Economic and Social Council in July and August 1948 in Geneva and then in the Legal Committee of the General Assembly at its third regular session in Paris, where again the United States delegates played an important role in the formulation of the draft convention. And why? What is the purpose in putting over this fraud, or attempting to, on the people of the United States? I will tell you.

We find, sir, that originally the proposition for the adoption of a genocide convention was on the right course, as submitted to you by Mr. Finch. It was to draft a convention to outlaw and to provide for the punishment and penalties against states, governments, nations against their own nationals or any other nationals against such a repetition of what the Nazis did to their nationals, against a continuation of what the Russians are doing to their nationals, what Bulgaria did to its religious nationals and is continuing to do, and what is going on behind the iron curtain. No.

We see on page 736 of the American Journal of International Law, October 1949 issue, the report of the fact that, and I quote:

> The United States did not hold to the position with which it started to negotiate the Genocide Convention, namely, that the crime of genocide properly defined is inherently one committed at the instigation or with the complicity of a state.

Why did the United States delegate surrender that proper principle? Was it to appease Russia? Was it to condone further mass murders of poor unfortunate nationals? They are certainly given no protection by this fake, so-called Genocide Convention.

Now, Mr. Chairman, as Mr. Finch has told you, under the precedent set by the United States Supreme Court in its decision in *Missouri* v. *Holland* (reported in 252 Second U. S. 416), the conclusion of a treaty by the Federal Government confers upon it authority in fields of action reserved to the States which the Federal Government would not have without such a treaty.

Article 6 of our United States Constitution provides that all treaties which shall be made shall be the superme law of the land and all judges of every State shall recognize it as such. Hands off by the judges of the State courts if the subject matter is covered by treaty or so-called Genocide Convention, if it is imposed upon the people in the States of this country by the United States Senate, and God forbid, and I don't believe it will be.

Then article 3, section 2, of the United States Constitution provides that the judicial powers of the United States shall extend to all matters and provisions respecting treaties. So that the Federal courts would have exclusive jurisdiction of all matters of prosecution and law enforcement and decisions of criminal cases coming under any of the broad interpretations that can be placed under these genocide provisions.

Further, article 5 of the convention provides that the contracting parties undertake to enact, in accordance with their respective constitutions, the necessary legislation to give effect to the provisions of

the convention and to provide effective penalties for persons guilty of genocide or of any of the other acts, any of the other acts enumerated in article 3.

So, besides genocide, I submit Mr. Chairman, by their own statement and admission, they have gone into other subjects of criminal law in the convention, such as ordinary libel and slander that might cause mental harm to a prosecuting witness, all forms of homicide and personal injury cases could be brought under the broad mantle of genocide, and the mechanics of the thing would simply be that the United States attorney would walk into the State district court and move to transfer the cases to the Federal courts. But what is still worse than the destruction of our constitutional set-up and our framework of government in America is the overhanging threat that citizens of our States someday will have to face an international tribunal, where now they must face the State courts and a jury of their peers. As a matter of fact, the United Nations has already set up the machinery for the creation or establishing of an international judicial organ for the trial of persons charged with genocide or for establishing a criminal chamber of the International Court of Justice, and you will find that, sir, in a resolution adopted by the United Nations relating to the study by the International Law Commission on the question of an International Criminal Jurisdiction.

Now when these people, proponents, Mr. Chairman, come before your committee, they come here to advocate the ratification of such a convention, do they have that in mind, or aren't they moved simply by the horror campaign that was led as propaganda to fool them into supporting this so-called Genocide Convention? Yes, the people of this country are faced with a probability, if this convention is endorsed or ratified by the Senate, that the next step will be to use the same sort of malicious sort of propaganda to establish a Court of International Penal Relations.

This convention, sir, provides for extradition, and commits the contracting parties to extradite its citizens for trial before such a tribunal, and what is said in answer to that? The tribunal hasn't been set up; nothing can be done; nobody can be extradited from here until Congress acts. Will Congress act in this instance? If it does, it will act in the other, and then what will the picture be? The establishment of an international court with penal jurisdiction or a criminal branch or a chamber of the International Court of Justice. We will witness, sir, what largely brought about a revolution in this country. We will witness, sir, what was stated by our patriots who rebelled against the British Crown for its tyrannies, the greatest patriots ever produced in the land, who wrote this Declaration of Independence, and let me read from it to you, sir, and I want to file it of record, and I have the pertinent parts checked out. [Reading:]

The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world. For depriving us in many cases of the benefit of trial by jury; for transporting us beyond the seas to be tried for pretended offenses; for taking away our charters; abolishing our most valuable laws and altering fundamentally the form of our government—

and, sir, to abolish those tyrannies, those great American patriots, in support of their independence, pledged themselves with a firm reliance on the protection of Divine Providence: "We mutually pledge

to each other our lives, our fortunes and our sacred honor." They fought the war of revolution. They won their independence. They forced a treaty from the British Crown in 1782 and 1783, and what was the first thing which they forced the British Crown to relinquish? His British Majesty, for himself and his successors and assigns, relinquished to the United States this, namely, the Thirteen Original States, first, the right of government, proprietorship, and territorial jurisdiction.

Are we to throw away those precious heritages, won for the present and future generations, at the cost of the blood of those patriots—those men, because they were men—and if we are men, we will tell those today who are misled and who urge upon you gentlemen of the Senate to ratify this monstrosity, that you will preserve our constitutional form of government, that you will not resort to the dishonest subterfuge of amending and destroying the most precious, blood-bought provisions of our Constitution, which reserve to the people of our States the right to control and regulate our own domestic affairs, the right to trial by a jury of their peers at the situs of where the crimes have been committed, or the alleged offense may have been committed, but not to be shipped to foreign lands to be tried before foreign tribunals, to respect the Bill of Rights provided in our Constitution, and I say to you, sir, that not a man would propose this with an honest thought in his mind if he knows the conspiracy back of the Americans in that United Nations who were so busy and who were responsible for adopting this fake, so-called Genocide Convention. It was simply no more, no less that a part of the pattern of the conspiracy to destroy our American institutions, to nationalize our domestic relations and to deprive the States and the people of the States of their right of self-government. Thank you, Mr. Chairman.

Chairman McMAHON. Next we have Mr. Charles W. Tillott.

STATEMENT OF CHARLES W. TILLOTT, CHAIRMAN, SECTION OF INTERNATIONAL AND COMPARATIVE LAW

Mr. TILLOTT. I would like to say, first of all, sir, that I appear here in my individual capacity as an American citizen. I would also like to say, however, that my interest in this matter derives from the fact that I am chairman of the section of international and comparative law of the American Bar Association, and for 2 years previously, I was a member of the special committee on peace and law through United Nations. I cite that not for any purpose of making it appear that I am speaking officially, but merely for the purpose of showing that I have an interest in the matter and have had some opportunity to be familiar with the subject under consideration.

A good deal has been said here about the act of the house of delegates in St. Louis. It is conceded that the house of delegates is the only official group that can speak, and the only thing that the house of delegates has said officially with respect to this convention is contained in the resolution which has been submitted to you, the material part of it being that the Convention on Genocide now before the United States Senate be not approved as submitted.

Now those words "as submitted" were very important in the consideration of the house of delegates, because it was stated on the floor, and it was stated as being agreed that both the section of international

and comparative law and the special committee were a unit that the convention should not be ratified as submitted because, as far as the special committee was concerned, they wanted it rejected in toto and we wanted it ratified only with certain reservations. And so, in my construction of the action of the house of delegates, it is that there was a compromise which was to the effect that the convention be not approved as submitted, and that very resolution provided that copies of the proposals of the section on international and comparative law and the special committee be submitted to the appropriate committees of Congress, and the effect of that action in my interpretation of the house of delegates was to hold that, while the convention in its exact terms was not acceptable, by providing that the international law section's recommendations be sent to the appropriate committees of Congress. The house of delegates invited Congress to consider the ratification of the convention with reservations as one of the alternatives to be followed.

Now this booklet, which I present here, entitled "Report and Recommendations of the Section of International and Comparative Law," has probably already been filed with the committee, but I would like to file it now as a part of my remarks, to be sure that it will be before the committee.

(Excerpts from the booklet submitted by Mr. Tillott are as follows:)

REPORT AND RECOMMENDATIONS OF THE SECTION OF INTERNATIONAL AND COMPARATIVE LAW ON THE HUMAN RIGHTS COVENANT AND THE GENOCIDE CONVENTION TO THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION, AND RESOLUTIONS ADOPTED BY THE HOUSE OF DELEGATES, SEPTEMBER 8, 1949

I. EXPLANATORY NOTE

The house of delegates of the American Bar Association on September 8, 1949, had before it for consideration certain resolutions recommended by the section of international and comparative law approving the adoption of a Covenant on Human Rights and the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide.[1] It also had for consideration a report dealing with the covenant and convention which had been filed by the special committee on peace and law through United Nations. As a compromise of the recommendations made by the section and the report of the Special Committee two resolutions were adopted by the house of delegates as follows:

"House of Delegates Resolution on Covenant on Human Rights

"*Resolved*, That the special committee on peace and law through United Nations and the section of international and comparative law be authorized, in response to the request of the State Department of the United States, to transmit to it the written reports of the special committee and the section, and such other comments on the proposed covenant on human rights as they may deem appropriate; also transmit such comments as they may have upon the covenant to the appropriate authorities of the United Nations.

"House of Delegates Resolution on Genocide Convention

"*Be It Resolved*, That it is the sense of the American Bar Association that the conscience of America like that of the civilized world revolts against genocide (mass killing and destruction of peoples); that such acts are contrary to the moral law and are abhorrent to all who have a proper and decent regard for the dignity of human beings, regardless of the national, ethnical, racial, religious or political groups to which they belong; that genocide as thus understood should have the constant opposition of the Government of the United States and of all of its people.

[1] For texts of Draft Covenant on Human Rights and Genocide Convention see appendixes A and B.

"*Be It Further Resolved*, That the suppression and punishment of genocide under an international convention to which it is proposed the United States shall be a party involves important constitutional questions; that the proposed convention raises important fundamental questions but does not resolve them in a manner consistent with our form of government.

"*Therefore, Be It Resolved*, That the Convention on Genocide now before the United States Senate be not approved as submitted.

"*Be It Resolved Further*, That copies of the report of the special committee on peace and law through United Nations and the suggested resolutions from the section of international and comparative law be transmitted, together with a copy of this resolution, to the appropriate committees of the United States Senate and House of Representatives."

II. Covenant on Human Rights: Recommendation of Section

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III. Genocide Convention: Recommendation

The section's recommended resolution regarding the Genocide Convention was as follows:

Resolved, That the American Bar Association approves ratification of the Convention on the Prevention and Punishment of the Crime of Genocide now pending before the United States Senate subject to effective reservations as follows:

1. That the words "with intent to destroy in whole or in part a national, ethnical, racial, or religious group as such" in article II refer to all the inhabitants of a country who are idenifiable as of the same national, ethnical, or racial origin or of the same religious belief and that none of the acts enumerated in the subparagraphs of the said article II shall be deemed to have been committed with the requisite intent to destroy such a group in whole or in part unless such acts directly affect thousands of persons.

2. That the phrase "mental harm" in article II (b) means permanent physical injury to mental faculties of members of a group, such as that caused by the excessive use or administration of narcotics.

3. That the provision "direct and public incitement to commit genocide" in subparagraph (c) of article III shall not have any application to the United States because to render such incitement unlawful in the United States it is sufficient to outlaw conspiracy to commit genocide as is done in subparagraph (b) of article III and the attempt to commit genocide as is done in subparagraph (d) of article III without specifically enumerating the act of direct and public incitement as contained in subparagraph (c) of article III.

4. That the phrase "complicity in genocide" in article III (e) means "aiding, abetting, counseling, commanding, inducing, or procuring the commission of genocide."

5. That the phrase "responsibility of a state for genocide" in article IX does not mean responsibility of a national government to pay damages for injuries to its own nationals and that this phrase does not mean that a national government may be prosecuted as a defendant in any case arising under the convention.

6. That articles I through VII of the convention are not self-executing in the United States; that Federal legislation will be necessary to carry out the provision of these articles, and such legislation will be limited to matters appropriate under the constitutional system of the United States for Federal legislation.

7. That a person charged with having committed an act in the United States in violation of the statutes enacted to implement the convention shall be tried only by the Federal court of the district wherein the act is alleged to have been committed.

Reasons supporting recommendation

1. The slaughter of huge groups of people, the indiscriminate killing of men, women, and children who fit into some religious or other classification, the killing of them merely for the sake of killing is the most abominable of all crimes.

2. People from all the earth meet on common ground in condemning a crime so heartless and barbaric as genocide, and this international unity of thought presents a compelling opportunity for action. The main objective can be effected even though reservations are necessary to maintain individual legal systems.

3. Genocide is a crime with international effects and reverberations because, when the members of a group in one country are murdered because of their group membership, violently hostile feelings are aroused in the hearts of all members of that group in other countries. Hostile feelings can easily lead to active hostilities. Hostilities anywhere affect peace everywhere.

4. Religion is international. It knows no national boundaries. Hence the destruction in a country of a religious group must in the nature of the case arouse instantaneously in all other members of that group everywhere deep-seated resentment.

5. A convention is necessary because under the Nuremberg law genocide is not an international crime, if not committed in connection with or during war.

6. Recognizing that the facts are as set forth above, the United Nations for 2 years has had some of the ablest lawyers in the world at work drafting an international criminal law against genocide and the convention is the result. It is a product of the work of lawyers from the Orient as well as the Occident; lawyers with civil as well as common law backgrounds; lawyers speaking many different languages.

7. Naturally, when such an instrument is laid down alongside the highly specialized legal system of any one country with a view to being integrated therein there are some places where it doesn't fit. Instead of being rejected in toto, it should be brought into relationship by appropriate reservations. That is what we believe we have done as regards the convention and the legal system of the United States by the reservations we propose.

8. Under the reservations that we suggest the treaty will not be self-executing, and only that implementing legislation will be required to be adopted by Congress that is appropriate for Federal enactment under our constitutional system.

IV. Report of the United Nations Committee

Accompanying the foregoing recommendations to the house of delegates there was submitted the report of the United Nations committee of the section of international and comparative law, with which committee the above recommendations originated. The report of that committee was as follows:

* * * * * * *

C. THE GENOCIDE CONVENTION

The Nuremberg ruling that genocide is a crime against international law, and punishable, applies only to acts committed during or in connection with war. The Convention for the Prevention and Punishment of the Crime of Genocide that has been approved by the General Assembly of the United Nations for adoption by its member nations is designed to fill in the gap created by the Nuremberg ruling, and make of genocide a crime no matter when committed.

The necessity for a genocide convention is very real. Genocide has repeated itself throughout history almost with the regularity of a biological law. Widely known cases include the destruction of Carthage by the Romans, the extermination of the Armenians by the Turks, the pogroms against the Jews in Czarist Russia and Rumania, and the massacres of the Albigenses and Waldenses, the Herreros, and the Christian Assyrians. The latest case of genocide, and the one that has stimulated the civilized world to determine that never again shall this happen, is the destruction of 6,000,000 Jews, several million Slavs and all of the Gypsies of Europe by the Nazis.

The Genocide Convention, unlike the Draft Covenant on Human Rights, which is now in the committee or commission stage, is presented as a finished document, ready for acceptance by the nations, or rejection. We do not have the right to offer suggestions for improvement in the language of the convention; as to its language, we must take it or leave it as it is. But we do have the right to make suggestions for reservations which, if adopted, will have the effect of making the improvements in the convention which we would wish. Our committee calls attention to the fact that article II (b) should be clarified as to the exact meaning of "mental harm"; that article III (c), which condemns "incitement to commit genocide" should probably be omitted as in conflict with the doctrine of freedom of speech, that article III (e) which condemns "complicity in genocide" is too broad, maybe, for a criminal law and that article IX contains the phrase "responsibility of a state for genocide" the exact implications of which should be made clear. We recognize, however, that no piece of legislation, much less a piece of international legislation, can go through the mill

of discussion, debate, and amendment in two or three different languages between and among conferees having a multitude of different national backgrounds and come out perfect. Domestic legislation—even our own American Constitution—is not free of imperfections and ambiguities. Several of the provisions of the convention should be subjected to reservations if and when approved by the United States Senate.

It is quite clear from the terms of the instrument that it is not self-executing as to the vital penal portions thereof. It will be carried into effect in respect to penalties and the other incidentals of a criminal law insofar as the United States is concerned only when the Congress has enacted the necessary legislation in accordance with our Constitution. We quote in full the important language of article V:

"The contracting parties undertake to enact, in accordance with their respective constitutions, the necessary legislation to give effect to the provisions of the present convention and, in particular, to provide, effective penalties for persons guilty of genocide or of any of the other acts enumerated in Article III."

We note that under the provisions of article VI persons charged with acts condemned by the convention shall be tried by no tribunals except those of the state "in the territory of which the act was committed" until and unless the jurisdiction of an international penal tribunal is definitely accepted by the United States. There is no movement on foot now that the jurisdiction of any international penal tribunal shall be accepted. In fact, no such international penal tribunal has been organized.

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V. APPENDICES

APPENDIX A

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

[As revised by the United Nations Commission on Human Rights at its fifth session at Lake Success from May 9 to June 20, 1949—The Commission is expected to reconvene for its sixth session early in 1950 to complete its revision of the Draft Covenant.]

Preamble

[Consideration of the Preamble was postponed—the United States proposed that the Preamble read as follows: "The States parties hereto, bearing in mind the general principles proclaimed in the United Nations Charter and in the Universal Declaration of Human Rights, approved by the General Assembly of the United Nations on 10 December 1948, agree upon the following articles with respect to certain human rights and fundamental freedoms:"]

Article 1

[Consideration of Article 1 was postponed. It provides: "The States parties hereto declare that they recognize the rights and freedoms set forth in Part II hereof as being among the human rights and fundamental freedoms founded on the general principles of law recognized by civilized nations."]

Article 2

1. Each State party hereto undertakes to ensure to all individuals within its jurisdiction the rights defined in this Covenant. Where not already provided by legislative or other measures, each State undertakes, in accordance with its constitutional processes and in accordance with the provisions of this Covenant, to adopt within a reasonable time such legislative or other measures to give effect to the rights defined in this Covenant.

2. Each State party hereto undertakes to ensure that any person whose rights or freedoms as herein defined are violated shall have an effective remedy before the competent national tribunals notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 3

[Consideration of Article 3 was postponed for consideration with implementation at the next session of the Commission. Article 3 provides: "On receipt of a request to this effect from the Secretary-General of the United Nations made under the authority of a resolution of the General Assembly, the Government of any party to this Covenant shall supply an explanation as to the manner in which the law of that State gives effect to any of the provisions of this Covenant."]

Article 4

1. In time of war or other public emergency, threatening the interests of the people, a State may take measures derogating from its obligations under Part II of the Covenant to the extent strictly limited by the exigencies of the situation.
2. No derogation from Articles . . . can be made under this provision.
3. Any State party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when such measures cease to operate and the provisions of Part II of the Covenant are being fully executed.

Article 5

1. No one shall be deprived of his life. (United States proposed the addition of the word "arbitrarily" at the end of this sentence—the Commission will undertake to complete this sentence at its next session.)
2. In countries where capital punishment exists, sentence of death may be imposed only as a penalty for the most serious crimes.
3. No one may be executed save in virtue of the sentence of a competent court and in accordance with a law in force and not contrary to the principles expressed in the Universal Declaration of Human Rights.
4. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

Article 6

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7

[Consideration of Article 7 was postponed. The views of the World Health Organization concerning this Article were requested by the Commission. It provides: "No one shall be subject to any form of physical mutilation or medical or scientific experimentation against his will."]

Article 8

1. No one shall be held in slavery; slavery and the slave trade shall be prohibited in all their forms.
2. No one shall be held in servitude.
3. No one shall be required to perform forced or compulsory labour except pursuant to a sentence to such punishment for a crime by a competent court.
4. For the purposes of this Article, the term "forced or compulsory labour" shall not include:

(a) any work, not amounting to hard labour, required to be done in the ordinary course of prison routine by a person undergoing detention imposed by the lawful order of a court;

(b) any service of a military character or, in the case of conscientious objectors, in countries where they are recognized, exacted in virtue of laws requiring compulsory national service;

(c) any service exacted in cases of emergencies or calamities threatening the life or well-being of the community;

(d) any work or service which forms part of the normal civil obligations.

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Article 9

1. No one shall be subjected to arbitrary arrest or detention.
2. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law.
3. Any one who is arrested shall be informed promptly of the reasons for his arrest and of any charges against him.
4. Any one arrested or detained on the charge of having committed a crime or of preparing to commit a crime shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pending trial, release may be conditioned by guarantees to appear for trial.
5. Every one who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
6. Every person who has been the victim of unlawful arrest or deprivation of liberty shall have an enforceable right to compensation.

Article 10

No one shall be imprisoned merely on the grounds of inability to fulfill a contractual obligation.

Article 11

1. Subject to any general law, adopted for specific reasons of national security, public safety or health:
(a) every one has the right to liberty of movement and is free to choose his residence within the borders of each State;
(b) any one shall be free to leave any country including his own.
2. Any one is free to return to the country of which he is a national.

Article 12

No alien legally admitted to the territory of a State shall be expelled therefrom except on such grounds and according to such procedure and safeguards as are provided by law.

Article 13

1. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, every one is entitled to a fair and public hearing, by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security, or where the interest of juveniles or incapacitated persons so require.
2. Every one charged with a penal offence has the right to be presumed innocent, until proved guilty according to law. In the determination of any criminal charge against him, every one is entitled to the following minimum guarantees, in full equality:
(a) to be informed promptly of the nature and cause of the accusation against him;
(b) to defend himself in person or through legal assistance which shall include the right to legal assistance of his own choosing, or if he does not have such, to be informed of his right and, if unobtainable by him, to have legal assistance assigned;
(c) to examine, or have examined, the witnesses against him and to obtain compulsory attendance of witnesses in his behalf;
(d) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.
3. Every one who has undergone punishment as a result of an erroneous conviction of crime shall have an enforceable right to compensation. This right shall accrue to the heirs of a person executed by virtue of an erroneous sentence.

Article 14

No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 15

Every one has the right to recognition everywhere as a person before the law.

Article 16

1. Every one has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion, or belief in teaching, practice, worship and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are pursuant to law and are reasonable and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Article 17

[Freedom of speech and the press—the consideration of this Article was postponed since the General Assembly in the fall of 1949 is scheduled to consider a separate convention on freedom of information.]

Article 18

Every one has the right to freedom of peaceful assembly. No restrictions shall be placed on the exercise of this right other than those prescribed by law and which are necessary to ensure national security, public order, the protection of health or morals, or the protection of the rights and freedoms of others.

Article 19

1. Every one has the right to freedom of association with others.
2. This freedom shall be subject only to such limitations as are pursuant to law and which are necessary for the protection of national security, public order, public safety, health or morals, or the fundamental rights and freedoms of others.
3. National legislation shall neither prejudice, nor be applied in such a manner as to prejudice, the guarantees provided for in the International Convention on Freedom of Association and Protection of the Right to Organize, in so far as States parties to that Convention are concerned.

Article 20

1. All are equal before the law and shall be accorded equal protection of the law.
2. Every one shall be accorded all the rights and freedoms defined in this Covenant without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Every one shall be accorded equal protection against any incitement to such discrimination.

Article 21

[Propaganda—the consideration of this Article was postponed until Article 17 on freedom of speech and the press is considered by the Commission at its next session.]

Article 22

1. Nothing in this Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms defined herein or at their limitation to a greater extent than is already provided for in this Covenant.
2. Nothing in this Covenant may be construed as limiting or derogating from any of the rights and freedoms which may be guaranteed to all under the laws of any contracting State or any conventions to which it is a party.

Article 23

1. This Covenant shall be open for signature or accession on behalf of any State Member of the United Nations or of any non-Member State to which an invitation has been extended by the General Assembly.
2. Ratification of or accession to this Covenant shall be effected by the deposit of an instrument of ratification or accession with the Secretary-General of the United Nations, and as soon as . . . States have deposited such instruments, the Covenant shall come into force between them. As regards any State which ratifies or accedes thereafter, the Covenant shall come into force on the date of the deposit of its instrument of ratification or accession.
3. The Secretary-General of the United Nations shall inform all Members of the United Nations and other States which have ratified or acceded, of the deposit of each instrument of ratification or accession.

Article 24

[Federal state—consideration of this Article was postponed. The United States proposed that this Article read as follows:
"In the case of a Federal State, the following provisions shall apply:
(a) With respect to any Articles of this Covenant which the Federal Government regards as appropriate under its constitutional system, in whole or in part, for federal action, the obligations of the Federal Government shall to this extent, be the same as those of parties which are not Federal States;
(b) In respect of Articles which the Federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces, or cantons, the Federal Government shall bring such provisions, with favourable recommendation, to the notice of the appropriate authorities, of the states, provinces or cantons at the earliest possible moment."]

Article 25

[Extension of the provisions of the Covenant to non-self-governing territories—considerations of this Article was postponed.]

Article 26

[Amendments to the Covenant—consideration of this Article was postponed.]

Article on Implementation

[The consideration of proposals for an article on implementation was postponed—the United Kingdom and the United States proposed the following article for inclusion in the Covenant for the implementation of the Covenant:
"1. If a State Party to the Covenant considers that another State Party is not giving effect to a provision of the Covenant, it may bring the matter to the attention of that State. If the matter is not adjusted between them within six months, either State shall have the right to refer it, by notice to the Secretary-General of the United Nations and to the other State, to a Human Rights Committee to be established in accordance with the provisions of this Article.
2. The Secretary-General of the United Nations shall establish a panel of persons of high moral character and of suitable ability and qualifications, designated by States Parties to the Covenant from among their nationals, to serve on Human Rights Committees in their personal capacity. Each State Party to the Covenant may designate two persons for periods of five years.
3. Upon notice being given to the Secretary-General, a Human Rights Committee shall be established of five members selected from the panel, one member by the State or States referring the matter, one member by the other States

and three by agreement between them. If any place on the Committee has not been filled within three months, the Secretary-General shall select a person from the panel to fill it.

4. The Committee shall meet at the Headquarters of the United Nations in the absence of agreement to the contrary between the Parties to the dispute and the Secretary-General, and shall establish its own rules of procedure provided that:

(a) the States concerned shall have the right to be represented at the hearings of the Committee and to make submissions to it orally and in writing; and

(b) the Committee shall hold its hearings and other meetings in closed session.

5. The Secretary-General of the United Nations shall provide the necessary services and facilities for the Committee and its members.

6. The Committee may call for relevant information from any State concerned and such State shall supply the information requested.

7. The Committee may ask the United Nations Commission on Human Rights * to request the International Court of Justice for an advisory opinion on legal questions.

8. The Committee shall within six months of its first meeting report its findings of fact to the States concerned, and to the Secretary-General for publication.

The record of the Committee shall be deposited with the Secretary-General.

9. Nothing in this Article shall preclude reference of the matter of the International Court of Justice for decision if the States referred to in paragraph 1 so agree."]

Mr. TILLOTT. I would also like to file in the extension of my remarks a statement that was prepared for the section by Mr. John Foster Dulles and was presented at St. Louis.

(The matter referred to is as follows:)

INTERNATIONAL CRIMINAL LAW AND INDIVIDUALS—A COMMENT ON THE PRINCIPLES INVOLVED IN THE HUMAN RIGHTS COVENANT AND GENOCIDE CONVENTION BY JOHN FOSTER DULLES

(Prepared for the chairman of the section on international and comparative law, at the annual meeting of the American Bar Association in St. Louis, Mo., September 1949)

There is general recognition of the fact that international order requires a development of international law. There is, however, no agreement as to how this international law shall operate, whether upon states or upon individuals. Of course there are some kinds of international law that necessarily operate only on States. But that is not so where the international law is designed to regulate individual conduct. Such laws, if they operate only upon states, may read well, but in practice they rarely work well because there is no peaceful way to enforce them.

This whole matter was thoroughly analyzed and discussed by the founders of our Nation and the authors of our Constitution. No less than six of the Federalist Papers (Nos. 15–20) deal with this subject and what is there said deserves rereading. It is pointed out that laws, to be effective, must have a sanction, and that when laws operate only upon states in their corporate capacity, the only sanction is war. Those who rule a state are indeed trustees for their own people. They have a special relationship to them and oftentimes could not hold political power unless they reflected the desires of their constituents. Therefore, says the Federalist, "The rulers of the respective members, whether they have a constitutional right to do it or not, will undertake to judge the propriety of the measures themselves" (No. 15). Any authority capable of preserving the general tranquillity "must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations" (No. 16).

The basic proposition expressed in a heavily capitalized sentence in the Fifteenth Federalist paper is:

"The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of which they consist."

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*[It will be necessary for the General Assembly to authorize the Commission on Human Rights to request advisory opinions of the International Court of Justice in accordance with Article 96 of the Charter of the United Nations.]

And the conclusion, put at the end of the twentieth paper, is this:

"* * * a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity, by substituting *violence* in place of *law*, or the destructive *coercion* of the *sword* in place of the mild and salutary *coercion* of the *magistracy*."

The Treaty of Versailles provided a good illustration of the validity of the arguments set forth in the Federalist Papers. That treaty forbade German rearmament and did so with great thoroughness. Marshall Foch saw to it that there were no loopholes. But the trouble was that the treaty operated only against the German Reich. For a short time it complied, and then it began to countenance minor violations. At the time, most of the Germans themselves probably did not like the violations and what they implied. Certainly, it would have been easy to stop the early infractions. But no easy way was provided. There were only the grave political sanctions of the treaty and the Allies did not find the early violations sufficiently important to justify political and military action against the whole German nation. So, initially, there was Allied acquiescence. Then the violations steadily became more numerous, the military power of the German Reich grew, its public opinion became more militaristic, until finally the treaty violations reached a volume that seemed to justify using the treaty sanctions. But by then it was seen that this would not be a mere police operation, but a full-scale war. At that time, France, Belgium, and England were not willing to go to war in an effort to compel the German Government to carry out the provisions of the treaty. So the "law" of Versailles collapsed in toto.

The revival of Germany's military power and its ability to wage World War II came about because the authors of the Treaty of Versailles ignored the reasoning of the Federalist Papers, namely, that international (treaty) law which operates only upon a state in its corporate capacity has no effective sanction except war, and war is a sanction which is not often invoked by those who seek, through law, to prevent war.

At the Moscow Council of Foreign Ministers, held in the spring of 1947, we discussed again the question of future German disarmament. I then urged that, in the light of past experience, any future prohibitions should operate not merely on the German state, but on German individuals, and that the magnitude of the penalty should be reasonably related to the magnitude of the offense. Then enforcement could reasonably be expected. If, for example, some individual German scientist should develop a laboratory for forbidden experimentation for biological warfare, that individual, if detected, could be given a jail sentence. That is a practical and enforceable sanction. It would not be practical, if that were an isolated case, to get the political decisions necessary to carry out war against the German nation because it failed, in that single case, to carry out its treaty obligation. Secretary Marshall seemed to share that point of view. If we had then drafted the proposed Four-Power German Disarmament Treaty, the United States delegation would, I think, have tried to make it the "law of the land," enforceable, like any other law, upon individuals, through the processes of courts.

Those who want international laws actually to assure human rights, where these rights are not automatically and freely assured by local law and custom, should seek to make those laws the "law of the land," through legislative or other measures, applicable to individuals and enforceable through the normal processes of the courts. To do otherwise will be to elect a course which will mean that the laws will not carry any real compulsion because, to use the phrasing of the Federalist Papers, international authority, to be effective, "must carry its agency to the persons of the citizens," and be enforceable through "the mild and salutary coercion of the magistracy."

There are many people who do not want to have international conventions which will effectively regulate human conduct in relation to human rights. They think that there should be diverse, local standards. They are certainly entitled to hold that point of view, and a strong case can be made for recognizing that the one indispensable sanction is community opinion, and where that is lacking, any enforcement is problematic. However, those who genuinely want communities to be under the compulsion of agreed international standards, as exemplified by a Human Rights or Genocide Convention, should, I think, envisage those standards in terms of law which operates on individuals, not upon the states, and which are enforceable by the courts, not by armies. Of course, everything cannot be done at once. But to abandon this goal would involve substituting pious words for an effective result.

Mr. TILLOTT. I should also like to file as an extension of my remarks a paper entitled, "The Genocide Convention Should Be Ratified," an address by Edgar Turlington, read to the section at St. Louis.

(The matter referred to is as follows:)

THE GENOCIDE CONVENTION SHOULD BE RATIFIED

(Address by Edgar Turlington, of Washington, D. C., before the section of international and comparative law, American Bar Association, St. Louis, Mo., September 6, 1949)

I have been asked to state the case for ratification of the convention, which is now before the United States Senate, for the prevention and punishment of genocide.

I will state my points first and bring in my authorities later.

Here are my points:

1. In view of the leading part taken by our representatives in drawing up the convention and getting it approved by the General Assembly of the United Nations, rejection by us would be very damaging to our national prestige.

2. International cooperation for the prevention and punishment of genocide is of great importance because genocide is a potential menace to the peace and security of the world.

3. An agreement of this subject is particularly appropriate at this time because the memory of recent examples of genocide is still sufficiently fresh to induce us to accept a maximum amount of international cooperation for the prevention and punishment of the crime.

4. The convention that is now before the Senate for approval is a reasonably effective instrument for international cooperation to eliminate genocide and is probably the best that could be made at this time.

5. The obligations that would be assumed by the United States under the convention are entirely compatible with our constitutional system.

Now for the authorities.

My first authority is Dr. Raphael Lemkin, the originator of the word "genocide." In his treatise on Axis Rule in Occupied Europe, published in 1944, Dr. Lemkin said:

"New conceptions require new terms. By 'genocide' we mean the destruction of a nation. This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word genos (race, tribe) and the Latin cide (killing), thus corresponding in its formation to such words as tyrannicide, homicide, patricide, matricide, infanticide, etc. Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. * * * Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group."

The examples of genocide cited by Dr. Lemkin include the destruction of Carthage by the Romans in 146 B. C.; the destruction of Jerusalem, also by the Romans in 72 A. D.; the massacres of the Albigenses and the Waldenses, religious groups in France, in the thirteenth and fourteenth centuries; and the siege of Magdeburg in the Thirty Years' War.

The most recent fully authenticated example is the extermination of 6,000,000 Jews, 2½ million Slavs and practically all the gypsies of Europe by the Nazis. This was one of the crimes against humanity specified in the Charter of the International Military Tribunal. Genocide was in fact punished by the Nuremberg tribunal insofar as it had been committed during the war. The tribunal held, however, that it was without jurisdiction with respect to acts of genocide committed during peacetime and having no connection with plans for aggressive war.

It should be clear from these examples that the concept of genocide does not apply to the race riots and other outbreaks of mob violence which sometimes occur in the United States. Genocide destroys great masses, thousands and even millions, of human beings because of their national, ethnical, or racial origin or of their religious belief. It aims at the destruction of all or sub-

stantially all the inhabitants of a given country who are identifiable as of the same national, ethnical, or racial origin or the same religious belief. We have never had in this country, and we probably never shall have, the kind of situation that produces genocide.

The necessity for an international agreement for the prevention of genocide in time of peace was urged by Dr. Lemkin in his book. Genocide, he pointed out:

"* * * is an especially important problem for Europe, where differentiation in nationhood is so marked that despite the principle of political and territorial self-determination, certain national groups may be obliged to live as minorities within the boundaries of other states. If these groups should not be adequately protected, such lack of protection would result in international disturbances, especially in the form of disorganized emigration of the persecuted, who would look for refuge elsewhere. That being the case, all countries must be concerned about such a problem, not only because of humanitarian, but also because of practical, reasons affecting the interest of every country."

An international multilateral treaty should, he said, provide for the introduction in the criminal code of every country of provisions protecting minority groups from oppression because of their nationhood, religion, or race. Genocide offenders should also, according to Dr. Lemkin's recommendation, be "subject to the principle of universal repression in the same way as other offenders guilty of the so-called delicta juris gentium (such as, for example, white slavery and trade in children, piracy, trade in narcotics and in obscene publications, and counterfeiting of money)." According to the principle of universal repression, as noted by Dr. Lemkin, the culprit would be liable to trial not only in the country in which he committed the crime, but also in any other country in which he might be apprehended.

Before bringing in additional authorities or arguments in support of my points, I will sketch briefly the quite unusual background of the negotiation of the convention that is before us. Here, again, we find that Dr. Lemkin was in at the beginning.

The story of the way in which genocide was brought before the General Assembly of the United Nations for action is told by Dr. Lemkin in an article published in the January 1947, issue of the American Journal of International Law. Conscious of the great necessity of establishing a rule of international law which would make sure that "revolting and horrible acts" committed by a government on its own citizens should in the future not go unpunished, Dr. Lemkin discussed the situation with several delegates at Lake Success. "Encouraged by their sympathetic understanding, he drafted a resolution which was signed by the representatives of Cuba, India, and Panama, as sponsors," and "with the strong support of the United States delegation, the resolution was placed on the agenda of the Assembly." It was referred to the Legal Committee of the Assembly and was considered, with various amendments, by a subcommittee, which had as its rapporteur Mr. Charles Fahy, at that time Legal Adviser of the State Department. The result was a resolution unanimously adopted on December 11, 1946, in which the General Assembly affirmed "that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices, whether private individuals, public officials, or statesmen and whether the crime is committed on political, racial, religious, or any other grounds, are punishable."

The resolution of December 1946, also declared that "the punishment of the crime of genocide is a matter of international concern." It recommended "that international cooperation be organized between states with a view to facilitating the speedy prevention and punishment of the crime of genocide." To this end it requested the Economic and Social Council to undertake the necessary studies with a view to drawing up a convention on the crime of genocide to be submitted to the next regular session of the General Assembly.

The studies requested by the Assembly were duly commenced, and a draft convention prepared by the Secretariat was circulated to the members of the United Nations in July 1947. A further resolution was adopted by the General Assembly on November 23, 1947, directing the Economic and Social Council to proceed with the completion of a draft convention without awaiting the receipt of the observations of all members of the United Nations. In this second resolution the General Assembly declared "that genocide is an international crime entailing national and international responsibility on the part of individuals and states."

The first draft of the document which became the convention that is now before us was prepared by a committee of seven members, generally known as the Ad Hoc Committee, appointed by the Economic and Social Council at the end of March 1948. This Committee was headed by a representative of the United States. The Vice Chairman was a representative of the U. S. S. R. The other members were representatives of China, France, Lebanon, Poland, and Venezuela. The Committee had before it the draft which had been prepared by the Secretariat and also drafts prepared by the United States and France, but it resolved to take a fresh start. After 28 meetings during the months of April and May, it reached agreement upon a draft which was submitted to the Economic and Social Council with a record of the reservations or statements of understanding made by various members of the Committee with respect to specified articles of the draft.

The Ad Hoc Committee draft was presented to the United Nations Assembly as its meeting in Paris in September 1948, and was referred to the Legal Committee of the Assembly for consideration and report. The Chairman of this Committee was Dr. Ricardo Alfaro of Panama. The Vice Chairman was Prince Wan Waithayakon of Siam, and the rapporteur was Mr. Spiropoulos of Greece. The other members were representatives of the remaining 55 members of the United Nations. The American representative was Mr. Ernest A. Gross, then Legal Adviser of the Department of State. This Committee devoted 51 meetings to genocide. The final text which was submitted to the General Assembly of the United Nations was agreed upon by the Committee at its meeting on December 2, 1948. The printed record of the consideration of the Genocide Convention by the Legal Committee runs to about 500 pages. This record is, of course, of great importance in view of the position which the Supreme Court has taken with reference to the pertinence of the record of negotiations in the construction of a treaty. It may be recalled that in the case of *Cook* v. *United States* (288 U. S. 102), involving our so-called Liquor Treaty of 1924 with Great Britain, nearly half of the opinion of the Court delivered by Judge Brandeis was devoted to a review of the negotiations which led to the signature of the treaty.

The draft convention submitted by the Legal Committee was approved by the General Assembly on December 9, 1948, by a vote of 55 to nothing. Three states were not represented at the time the vote was taken. These were Costa Rica, El Salvador, and the Union of South Africa. The approval of the convention was stated in the resolution to be for the purpose of submission to the members of the United Nations and to certain nonmembers for signatue and ratification or accession. The convention is open for signature until the end of the present year. It was signed on behalf of the United States on December 11, 1948. Up to August 31, 1949, it had been signed by 28 states and ratified by 4.

Now, I believe, we are ready for the argument.

The first of my five points invokes the very practical consideration of the national prestige. It does not require detailed development. I need only refer to President Truman's letter of February 5, 1947, transmitting to Congress his first annual report on the participation of the United States in the activities of the United Nations. The President stated in that letter that one of the important achievenments of the first session of the General Assembly was the agreeemnt of the members of the United Nations, in the resolution of December 11, 1946, that genocide constitutes a crime under international law. He "also emphasized that America has long been a symbol of freedom and democratic progress to peoples less favored than we have been and that we must maintain their belief in us by our policies and our acts." [1]

The second and third points, the menace to international peace and the appropriateness of action at this time, are also fairly obvious. It is hard to believe that crimes against humanity such as those that occurred in Germany from 1933 to 1939 will ever occur again in time of peace. Yet it may be stated without cynicism that one of the things of which we can be most certain in this world is the recrudescence from time to time of shocking instances of man's inhumanity to man. It is necessary, as the representative of Lebanon said in the Legal Committee (R. 32), to keep the conscience of humanity constantly on the alert. It is essential, the American representative declared (R. 5), that the convention be adopted as soon as possible, before the memory of the barbarous crimes of the still recent past fades from the minds of men.

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[1] Quoted from the President's letter of June 16, 1949, transmitting the convention to the Senate.

The proof of my point 4 (that the convention is reasonably effective and probably the best that could be made at this time) requires a detailed examination of the first nine articles of the convention. Those are the only substantive articles, and they run to only 431 words. I suggest that we read them now. I will go on talking while you read.

Let me first invite your special attention to the sharp descent from the lofty altitude of article I to the low and commonplace level of articles II to VII.

In article I the contracting parties reaffirm the declaration in the General Assembly resolution of December 1946, that genocide is "a crime under international law." They specify that it is a crime under international law whether committed in time of peace or in time of war, and they undertake to prevent and punish it. When you read these words you recall that the Nuremberg tribunal held that it was without jurisdiction over crimes of genocide committed in peacetime. Your natural thought is that here, in this convention, provision is about to be made for the punishment of genocide in peacetime by an international penal court. What else could be meant by referring to genocide as "a crime under international law?"

Well, there is one other thing that might have been meant. "Crime under international law" is translation of delictum juris gentium. The oldest example of such a crime is piracy, which, as you know, may be punished by any state that apprehends the criminal. The convention might possibly have recognized genocide as a crime under international law in this sense. It does not do so. As you will see upon reading the remainder of the convention and particularly the next six articles, there is nothing of the kind in the convention. There is also nothing to justify the use of the term "crime under international law" from the point of view of its punishment by an international court, existing or now provided for.

Article II of the convention contains a list of certain acts which constitute genocide if committed with intent to destroy a national, ethnical, racial, or religious groups, as such. (We shall come back to this later.)

In articles III to V the parties undertake to enact the necessary legislation for the punishment of all persons, including constitutionally responsibile rulers and public officials, who commit genocide, or who engage in conspiracy, incitement or attempt to commit genocide, or who are guilty of complicity in genocide.

Article VI, the jurisdictional article, provides merely that persons charged with genocide, conspiracy to commit genocide, etc., "shall be tried by a competent court of the state in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which have accepted its jurisdiction."

In article VII it is agreed that genocide, conspiracy to commit genocide, etc., shall not be regarded as political crimes for the purpose of extradition.

Here is a fine let-down for those who read article I with bated breath. All they get out of the convention so far is a promise of the parties to punish heads of state and public officials as well as private individuals who commit genocide, plus an indication that an international penal tribunal may be set up at some time in the future. Well, there is some satisfaction in the thought that if such a tribunal ever is set up high officials brought before it cannot offer the ex post facto excuse. They can't say they weren't warned. Genocide is a crime under international law, by virtue of this convention, in the sense that those committing it may be brought before a future international tribunal.

As you turn to article VIII of the convention, you move outside the sphere of purely territorial action. The provision here is that any contracting party may call upon the competent organs of the United Nations to take such action as those organs consider appropriate under the Charter for the prevention and suppression of acts of genocide. This provision may seem, upon casual examination, to give the contracting parties no right that they do not already possess. Upon careful consideration, however, it appears to have great potential significance. In the first five articles the parties have assumed the obligation to prevent genocide and to punish all who commit genocide within their respective territories, including responsible rulers and public officials. The contracting parties, in view of that obligation, cannot allege that genocide committed within their borders is a purely domestic matter under article 2, paragraph 7, of the Charter. Genocide, by virtue of the convention as well as by virtue of the Assembly resolution of 1946, is now a matter of international concern to which article 2, paragraph 7, of the Charter does not apply.

Article IX of the convention provides for reference to the International Court of Justice of disputes as to the interpretation, application, or fulfillment of the

convention, including disputes as to the responsibility of a state for genocide. This article may also be of very great importance. There may be situations in which the facts are not sufficiently clear to warrant a call upon the Security Council for action to prevent or suppress acts of genocide. Or there may be situations in which a state has committed or procured the commission of genocide with such thoroughness and dispatch as to leave nothing to be done by way of prevention or suppression. In such situations and in others that might arise the most appropriate procedure might be resort to the International Court of Justice. The Court, as we all know, has no criminal jurisdiction at present. Civil damages could, moreover, hardly be assessed against a state for mistreatment of its own nationals or for failure to protect its own nationals against mistreatment. This is the point of the Acting Secretary of State's recommendation that the Senate give its advice and consent to the ratification of the convention "with the understanding that article IX shall be understood in the traditional sense of responsibility to another state for injuries sustained by nationals of the complaining state in violation of principles of international law, and shall not be understood as meaning that a state can be held liable in damages for injuries inflicted by it on its own nationals."

Perhaps in such a situation the Court would act in much the same way in which it acted with respect to the wrong which it found to have been done by the United Kingdom to Albania in the recent Corfu case. The Court in that case (see 43 A. J. I. L. 583) unanimously gave judgment "that by reason of the acts of the British Navy in Albanian waters in the course of the operation of November 12 and 13, 1946, the United Kingdom violated the sovereignty of the People's Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction."

I submit that this rapid review of the text of the convention justifies my statement that the convention is a reasonably effective instrument for international cooperation to eliminate genocide. It is nothing to be enthusiastic about, but it is probably as good an agreement as can be made on the subject so long as the Russians and many of the best people in this country continue to insist that "international jurisdiction is a violation of the sovereign right of every state to judge crimes committed in its territory." (The quotation is from the record of what the Soviet representative said in the Legal Commitee, R. 379.)

I come now to the proof of my faith and final point. That is that the obligations that would be assumed by the United States under the convention are entirely compatible with our constitutional system.

The exercise of the treaty power to accomplish the purposes set forth in this convention is well within the rule of decision followed by the Supreme Court in *Missouri* v. *Holland* (252 U. S. 416). The national interest here involved is not, as in that case, one "of very nearly the first magnitude" which "can be protected only by national action in concert with that of another power." Since genocide is a menace to our peace and security, along with that of the whole world, the national interest involved is of the first magnitude beyond any doubt. It is, moreover, apparent that this interest can be adequately protected only by national action in concert with that of each of the other powers of the world. I submit that the treaty power could be properly exercised for this purpose to a far greater extent than is now proposed. Resisting the temptation to enter into detailed argument on the constitutionality of our participation in a possible agreement for an international court with jurisdiction over crimes of genocide, I submit merely that the power that would be exercised by such a court would not be a part of the judicial power of the United States and would therefore not be subject to the limitations set forth in the amendments to our Constitution.

I find no difficulties of a constitutional nature with respect to the need for legislative action to make the provisions of the convention effective as law of the United States. It is well established by decisions of the Supreme Court that a treaty provision which is made dependent on legislative action does not take effect as the law of the land until such action is had. (See *Foster* v. *Nielson*, 2 Pet. 253, and *U. S.* v. *Percheman*, 7 Pet. 513.) A seldom-cited case which has recently come to my attention seems to be highly pertinent. This is the case of *U. S.* v. *Hudson and Goodwin* (17 Cranch 32, 11 U. S. 31), decided in 1812. In this case it was held that the courts of the United States cannot punish an act as a crime until the legislative authority of the Union has made such act a crime, fixed a punishment for it, and declared the courts that shall have jurisdiction of it.

There is, however, another question which necessarily and properly arises in this connection and which is not covered, so far as I know, by any decision of the courts. That is the question whether Congress will be obliged to define genocide, in legislation, word for word as it is defined in the treaty. I submit that the answer to this question is to be found in the fundamental principle that the provisions of a treaty are to be construed to give effect to the real intentions of the parties as determined by a consideration of the whole instrument and, if necessary, after consultation of its history. (See *Cook* v. *United States*, already cited; and Crandall, Treaties, Their Making and Enforcement, 2d ed., p. 371.) The application of this principle presents special difficulties in connection with a multilateral instrument negotiated by the representatives of 58 States, but the difficulties are considerably reduced by the availability of a record in which the meaning of various expressions, as understood by the several negotiators, was set down. The answer to the question is, I submit, that Congress will not be obliged to use, in its legislation defining genocide, the exact words of the convention.

A check on the correctness of this answer may be afforded by an examination of the record of the negotiations with respect to two expressions in article II which have seemed obscure to some of those reading the convention. I have in mind the expression "in whole or in part" in the second line of the article and the expression "mental harm" in subparagraph (b).

The record of the discussions of the Legal Committee (R. 90–97) shows that the words "in whole or in part" were inserted at the suggestion of the representative of Norway. The French delegation had proposed that the concept of genocide be extended to cover cases where a single individual was attacked as a member of a group. The United States delegation considered that the concept should not be broadened to that extent. The United Kingdom delegate pointed out that it was better to restrict the convention to cases of destruction of human groups and, if it was desired to insure that cases of partial destruction should also be punished, the amendment proposed by the Norwegian delegation would have to be adopted. The Beglian delegation was opposed to the Norwegian amendment because, its spokesman said, it was clear that genocide was aimed at the destruction of a whole group, even if that result was achieved only in part, by stages. The amendment was adopted by a vote of 41 to 8 with 2 absentions. The Norwegian delegate's remark that it was not necessary to kill all the members of a group in order to commit genocide was consistent with the statement in the General Assembly resolution of December 1946, that many instances of genocide had occurred when racial, religious, political, and other groups had been destroyed, entirely or in part. The Legal Committee evidently considered that if the concept of genocide included the partial destruction of a group it should also include acts done with the intent to bring about such partial destruction. It is evident also that the Legal Committee had no intention of abandoning the concept of destruction on a large scale.

In this situation it is impossible to determine, either from the language of the convention or from an examination of the record, how large a part of a group a person must have the intent to destroy to make his act with such intent constitute genocide. It can hardly be expected that our Congress would pass, or our courts would uphold, legislation that is not more precise than the convention on this point. This is a case in which it would seem to be highly desirable for our Senate to set forth its understanding of what is meant by the language of the convention. The legislation subsequently enacted could not be impugned for following the sense of the Senate's statement.

The ascertainment of the meaning of the expression "mental harm" in article II (b) is less difficult. The corresponding subparagraph of article II in the Ad Hoc Committee draft read "impairing the physical integrity of members of the group." The Chinese representative in that Committee requested the inclusion in the record of a statement that the Japanese had intended to commit and had actually committed genocide by debauching the Chinese population with narcotics. He suggested the amendment of the subparagraph to read "impairing the physical integrity or mental capacity of members of the group" or "impairing the health of members of the group." A similar statement and a similar suggestion were made by the Chinese representative in the Legal Committee, and the reference to mental harm was inserted, upon the motion of the representative of India, to meet the desires of the Chinese representative (R. 175, 179).

Can we reasonably expect our Congress to pass, or our courts to uphold, a penal statute which refers to causing serious mental harm to members of a

group? Possibly we can, since the crime of genocide seems most unlikely to occur in this country. But if Congress and the courts follow the usual rules in regard to definiteness of penal statutes, different language should be used. The meaning that the negotiators intended to express was evidently pretty close to "causing serious bodily harm or mental incapacity." I submit that it would be entirely appropriate for Congress to substitute words more clearly expressing the intent of the negotiators.

There can be no serious question as to the liberty of Congress to define the acts enumerated in article III of the convention. The words "complicity" and "incitement" might, for example, be deemed by Congress to be lacking in definiteness. Complicity might perhaps be defined in our legislation in exact conformity with the statement, made for the record by the American representative on the Ad Hoc Committee, that he understood this term "to refer to accessoryship before and after the fact and to aiding and abetting in the commission of crimes enumerated in this article." As to incitement Congress might choose between two courses: It might omit specific provision regarding this act in accordance with the view of the American representative on the Ad Hoc Committee, expresed in the record, that "to outlaw such incitement, it is sufficient to outlaw the attempt and conspiracy without specifically enumerating the act of direct incitement," or it might include such a provision with the statement, also based on the record, that incitement shall be deemed to mean either a part of an attempt or an overt act of conspiracy. I may add that my own personal view is that there is no reason why Congress should hesitate to pass legislation, in exact conformity with article III (c) of the convention, for the punishment of direct and public incitement to commit genocide.

Before I yield the floor I wish to emphasize the practical importance of a correct understanding of this convention by the lawyers assembled in St. Louis. The American Bar Association is going to express itself on this subject tomorrow, and its voice will be heard in Washington.

Some of you have heard the view, which was expressed by a lawyer of great intelligence a few months ago, that the proposals framed under United Nations auspices to protect human rights and to prevent genocide were "purposely framed so as to take American domestic questions out of the sole jurisdiction of American courts and place them under some form of international appellate tribunal." I gravely doubt the correctness of this view as to the human rights proposals, with which we are not at the moment concerned, and I am sure that it is mistaken as to the genocide convention.

I hope that before this discusison ends it will be clear to all of us that the genocide convention is not aimed at the United States; that it has nothing at all to do with discriminations against racial or other groups or denials of elementary human rights to individuals; that it relates exclusively to mass exterminations and acts done with a view to mass exterminations involving thousands of human beings as members of groups; that genocide is characteristically committed, instigated or condoned by governments; that the provisions of the convention for trial of genocide offenders in national courts are likely to have no application in this country and very limited application elsewhere; and that the heart of the convention is in its provisions for international cooperation through the organs of the United Nations for the prevention and suppression of a crime which strikes at the roots of our civilization by denying our common humanity.

We have taken the lead in the making of the convention. We should be among the first to ratify it.

Mr. TILLOTT. There has been stated here as one of the grounds of opposition to this Genocide Convention that it will require that citizens of the United States be tried by an international tribunal and transported beyond the seas. That, of course, is obviously fallacious and not in line with the convention as presented, because it is clearly stated in the convention that the international tribunal which is referred to will not be binding upon our country unless it is accepted by a different and an affirmative act by our Congress.

Much has been argued here with respect to the construction of the verbiage of the convention. I feel that the large answer to all of those arguments is that courts always construe treaties, statutes, con-

stitutions, in terms of the objective attained, and everyone knows that the genesis of the Genocide Convention was mass murder, and if you will consider the objective to be attained, then it throws light upon many of the sections of the convention which have been criticized here today.

In passing, I would like to refer very briefly to something that has been stated by representatives of the American Bar Association's special committee with respect to regional meetings held all over the country. It is true, they did hold a number of regional meetings. But I want to impress upon you, as they themselves would be the first to admit, that those were restricted meetings. They were not meetings that were open to everybody who wanted to attend. In fact, on page 4 of their own special committee report, it is stated, "It is regretted that the conference type of meeting must be of a restricted number." In other words, they did not publish in the American Bar Association when and where those various regional meetings would be held and an invitation to everybody to come who might be interested—but they were of a restricted nature.

Senator McMahon. Were you invited to any of them?

Mr. Tillott. No, sir. The meeting that was held nearest me was at Savannah, Ga. I was not only not invited, but I was not informed that it would be held. I am quick to say that I don't mean to say it was any personal slight, but the ultimate fact was I was tremendously interested and would have attended any meeting that I would have known would occur anywhere around me, but there was no publicity given to it, and so I did not attend.

REASONS FOR SUPPORT

The basic reasons for supporting this Genocide Convention, as I see it, are these: The slaughter of huge groups of people, the indiscriminate killing of women, children, and men who fit into some other classification. The killing of them merely for the sake of killing is the most abominable of all crimes. People from all over the world meet on common ground in condemning a crime so heartless and barbaric as genocide. And this international unity of thought presents a compelling opportunity for action. The main objective can be effected even though reservations are necssary to maintain an individual legal system.

Genocide is a crime with international effects and reverberations, because when the members of a group in one country are murdered because of their group membership, violently hostile feelings are aroused in the hearts of all members of that group in other countries. Hostile feelings can easily lead to active hostilities. Hostilities anywhere affect peace everywhere. Religion is international; it knows no national boundaries. Hence the destruction in a country or a religious group must in the nature of the case arouse instantaneously in all other members of that group everywhere deep-seated resentment.

The convention is necessary, because under the Nuremberg law, genocide is not an international crime if not committed in connection with or during war. America and civilization generally are calling for a solution of the problems of peace through the instrumentality of world legislative processes. This, in part, is the explanation of the

movement for some sort of international political entity, some sort of government for world affairs, such as the World Federalists and similar movements.

NO WORLD PARLIAMENT

Now we have no world parliament, and so we must legislate internationally through multipartite treaties, since these multipartite treaties are part of commissions or committees, composed of representatives of various legal systems, such as civil and common law. It may sometimes be a given country, such as the United States will need to attach to it ratification reservations so as to bring these multipartite treaties into proper relationship with their own natural legal systems.

RECOMMENDED RESERVATIONS

I supported certain reservations, which you will find in our report and recommendations. It is true that certain of those reservations were presented in the hope that by including them, some common ground would be found, as between the international law section and the special committee, so that we would get an endorsement of the convention with those reservations. That proved not to be the case, and consequently, the matter comes before you with the international law section's recommendation that the convention be ratified with certain reservations.

You stated earlier that you would like to know which of those reservations, if any, were adopted or presented in the hope of establishing a common ground. I would say that in the pamphlet which has been introduced in evidence here, the reservations which bear the numbers "1," "2," "3," and "5" were considered, in general, by the section to be very material. The reservations bearing numbers "4," "6," and "7" were presented mainly with the idea that we would meet, thereby, certain arguments which were being presented by the special committee. I may say that it seems to some of us that the one word which has been talked about so much here today; that is, the genocide of a group in whole or in part. The word "part" could be very easily clarified, if the word "major" were included in advance of that, so that it would be the destruction of a group in whole or in major or part.

Senator McMahon. Let us assume there is a group of 200,000. Would that have to mean that you would have to murder 100,001 before a major part would come under the definition?

Mr. Tillott. Well, I do not think that it would be possible, of course, to state the matter mathematically, but I think that is a matter for a judicial construction. I think that there you must have confidence in your court, realizing that the court will again look to the objective of the legislation or the treaty for an interpretation of the words.

FIRST INTERNATIONAL LEGISLATION MAKING CHARTER PRINCIPLES DYNAMIC

This Genocide Convention is the first piece of international legislation that has been proposed by the United Nations for the purpose of making real and dynamic the principles contained in the Charter. It is the initial point of departure as between isolationism and internationalism. The action of the United States will show whether or not we really mean what we say when we approve the United Nations

Charter or are merely paying lip service to the form and not the substance of the organization.

The extermination of groups of human beings is conduct that all agree is abhorred and despicable. There is no disagreement about that. The sole point at issue here is will we obligate ourselves by a multipartite international agreement to take domestic measures in accordance with our own Constitution to wipe this abominable and beastly crime from the face of the earth. I am sure that I am representative of thousands of American lawyers and their opinion who feel that our Constitution is a great instrument of liberty and freedom and is not an instrument which, as some would have you believe, will shackle and paralyze us in the face of this international effort to outlaw this detestable crime.

Now I have a few minutes left of the time allotted to me, and I would like to introduce Mr. Edgar Turlington to the committee and ask him to make a very short statement. He is of Washington, the bar, former chairman of the section of international and comparative law. He is now treasurer of the American Society of International Law and is at present conducting a seminar for graduate students at Georgetown on the subject—constitutional questions in connection with foreign relations.

STATEMENT OF EDGAR TURLINGTON, TREASURER, AMERICAN SOCIETY OF INTERNATIONAL LAW

Mr. TURLINGTON. Mr. Chairman, I should like to begin by endorsing Mr. Tillott's suggestion that the insertion of the word "major" before the word "part" twice in article 2 would be very helpful. In the section's discussion at St. Louis, we decided to recommend something that I didn't think quite worked out; perhaps we weren't sufficiently skillful. At any rate, it appears now that our attempt to define the crime by saying that it had to involve thousands of persons is incompatible with the statement that Mr. Webb made in the record that came to the Senate. However, I want to point out that when he said that the murder of a single individual might constitute genocide, he said if committed with intent to destroy the group. Now I think if we put in the word "major" once at the beginning of article 2 and then a little lower down—yes; I have it here, "C," subparagraph "C"—we would accomplish the purpose of indicating that what is meant is the intent to destroy all or substantially all, all or at least a greater part, all and not just a few, or not just a few.

MENTAL HARM

I associate myself with Mr. Tillott in that suggestion, and one other suggestion that I know Mr. Tillott had in mind to make. He probably left that to me to make, because we had talked about it. Mental harm has caused difficulty in some peoples' minds. It is quite clear from the negotiations that that meant as Mr. Webb says, for example, in the transmitting letter, "mutilation or disintegration of the mind," and I might suggest your committee might consider the possibility of stating that that expression is understood to mean—this is article 2—"causing bodily mutilation or disintegration of the mind to members of the group." It is at least something much clearer than this thing which might be regarded as malicious animal magnetism.

GENOCIDE UNDER COMMON LAW

I think I will just go to something else that I made some notes of as Mr. Rix and Mr. Finch were talking primarily. As Mr. Rix says, genocide is a common-law crime and something more. The added element is the intent to destroy all or substantially all the members of the groups specified in article 2 of the Convention. The fact that the words "in whole" or "in part" do mean substantially all the members of the group is clear from the fact that when the Norwegian representative in the committee suggested that those words be put in, our representative, Mr. Gross, said that wouldn't make any difference in the concept. I think it is important to have in mind that he didn't think it would make any difference. What they all had in mind was the same thing that the Norwegian had in mind, when he said you don't have to intend to kill all the members of the group in order to have the genocidal intent. This was accepted as practically a statement of the obvious.

They were trying to get an expression that would say what they wanted, and their time, unfortunately, was limited. They had the handicaps of the method that Mr. Tillott referred to; this multiple negotiations is terrible. I imagine anybody who has participated in it would ratify that suggestion, but you have to yield sometimes, and the American representative, considering the whole situation, thought he ought to yield.

GENOCIDE NOT TO BE CONFUSED WITH RACE RIOTS

There is, I think, a widespread misunderstanding of the concept of genocide, the confusion of genocide with race riots. The lynching was, I think, well illustrated by the question asked by my good friend Mr. Rix. If the United States could not be a party to a convention on prostitution, what shall be said of genocide? The important thing, I think, is to say that prostitution is much more common than genocide. It extends throughout the State itself. It is not merely a Federal offense. I submit, Mr. Chairman, that Mr. Rix and his fellow members of the special committee on international peace and law are using against the Genocide Convention ammunition that might rather have been reserved for the proposed covenant on human rights. There will be, in my opinion, serious constitutional questions when you come to that. You are going to have the Federal-State relationship, and you can't get away from it. There is going to be, a I think, a very appropriate close scrutiny by not only the members of the American delegation, but by the Senate when any such thing as that comes to you.

LIMITATIONS UNDER THE CONSTITUTION

I think you may even go to the point of considering not merely the provisions of the Constitution, but the usages of the Constitution. It was not a provision of the Constitution that kept us from coming into the Convention on Prostitution. It was a usage or understanding to the effect that although the Federal Government could go into that field, it ought not to, unless there was some very extraordinary emergency. Here in genocide, I think you have an international situation.

The next point I have, Mr. Chairman, is I don't share the appre-

hension that the members of the committee on peace and law have that genocide, as defined in the convention, may be subject to prosecution and punishment without legislation by Congress. This apprehension, I think, should have been set at rest by the decisions of our courts in such cases as *Foster* v. *Nielson*, which is an old Supreme Court case (2 Peters 313); then *In re Metska* (17 Federal cases, No. 9511); then *Turner* v. *American Baptist Missionary Union* (5 McLane U. S. 344); and *United States* v. *Hudson and Goodwin* (11 U. S. 31).

I don't want to take up time now, but I could give you something interesting on the Goodwin case. I will pass from that.

CONVENTION CONTAINS EXPRESSIONS NOT CLOSELY RELATED TO OUR LEGAL CONCEPTS

Mr. Rix feels that even if the convention is not regarded as self-executing, the legislation to be passed by Congress will have to follow without deviation the convention definition of genocide. Here, I submit, Mr. Rix would restrain the exercise of the judgment of Congress to a much greater extent than is placed in the Constitution. I suggest that the obligation of the United States under the convention to enabling the necessary legislation to give effect to the provisions of the convention would be fully discharged by the enactment of legislation defining genocide in words that have the same meaning as the words of the convention. There are, in fact, some expressions at that Convention that don't correspond very closely to any of our legal concepts in the United States. What is important at this stage, I suggest, is that we make clear to the rest of the world what we understand to be the meaning of any words in the convention which may appear to us to be ambiguous. It was with that thought in mind that I concurred at St. Louis in the suggestion of some reservations, with particular reference to "in whole" or "in part" and "mental harm."

ARTICLE 2, SECTION 7 OF THE CHARTER NO BAR TO THE CONVENTION

Now the last thing I have to say, sir, is with reference to a statement that Mr. Finch made. He stated that the United Nations is prohibited by article 2, section 7, of the Charter from intervening in any matter that is essentially within the domestic jurisdiction of the parties. I submit that the language in article 2, section 7, does not stand in the way of the acceptance by the United States freely without reference to any liberty that it might have under the Charter not to be bound with an obligation such as it would accept under this convention to have its conduct subjected to scrutiny by organs of the United Nations and sometimes by the Supreme Court whenever it is alleged that our Government has failed to honor its signature of this convention.

I think, sir, that it would be found, and I think a good many people would agree with me, that the part of this convention that is of the greatest importance is not the part that provides for the punishment in the domestic courts of crimes. That in this country, I think we may properly say, is not to be anticipated. The important part is in articles 8 and 9, if I remember correctly, in which it is agreed by the parties to this convention that, notwithstanding the fact that article

2, section 7, of the Charter does not give the right to the United Nations to intervene in domestic matters, these matters that we are referring to here, genocidal matters, are outside of that description of essentially domestic questions and are properly subject to scrutiny by the international community. Thank you, sir.

Senator McMAHON. Thank you, Mr. Turlington. Our next witness is Mr. Thomas Dodd of Hartford, Conn.

STATEMENT OF THOMAS DODD, MEMBER, SPECIAL COMMITTEE ON PEACE AND LAW THROUGH UNITED NATIONS OF THE AMERICAN BAR ASSOCIATION

Mr. DODD. My name is Thomas Dodd of Hartford, Conn.

I appear primarily as a private citizen, but I am also a member of the American Bar Association special committee on peace and law through United Nations, which was heard here this afternoon through Messrs. Rix, Finch, and Schweppe.

I would like to tell you, sir, that I am a new member of the committee, having been appointed in October. So that I did not participate in the deliberations of the committee or in its recommendation to the bar association, and I have had no opportunity to do so since my appointment to the committee.

I am also, as you will recall, one who served with Justice Jackson as his executive trial counsel at the first major Nuremberg trial, so I have a triple interest in this proposed convention—in my private capacity as a citizen; now a member of the bar association on peace and law, and also as one who had something to do with the proceedings in the first and so-called major trial at Nuremberg. I will not take but a few minutes, because I realize the hour is late and that much has been covered with respect to what I might say, but I would like to point out a few things that occurred to me while I was listening.

Senator McMAHON. I might add you had a very distinguished record in the Nuremberg trial.

Mr. DODD. Thank you, sir. Because we have mentioned the Nuremberg trial, let me say this: It is a little bit out of place from what I had planned so far as my presentation is concerned.

At Nuremberg, we laid down the doctrine that individuals are responsible for some offenses, such as aggressive warfare. You will recall that there was some hue and cry raised in some places about the application of that doctrine. It always seemed to me that it is the people who make up the government, individual people, and I think the only way that we can effectively do anything in the field of international law is to hold individuals responsible, and as I read this proposal, I note that article 4, I believe it is, specifically refers to persons committing genocide or any of the other acts enumerated in article 3 shall be punished, whether they are constitutional rulers, public officials, or private individuals. It doesn't seem to me that there is too much to ask that we move along and implement, so to speak, the Nuremberg doctrine with respect to this Genocide Convention.

CONVENTION ELIMINATES UNCERTAINTY

Parenthetically, let me say it intrigues me a little bit, some of the people who heaved at us at Nuremberg the charge that we were guilty

of prosecution on an ex post facto basis are some of the same people who are now in opposition to the ratification of this convention. At least, it occurs to me that they ought to be consistent. I don't concede that there was anything ex post facto in the proceedings at Nuremberg, but assuming for the sake of this side of the thing that there is something to what they have claimed against us. I should suppose that they would be among the foremost in suggesting that now, in time of peace, we join with the other good-intentioned people of the world in trying to establish a firm basis in law for the prevention of this kind of thing.

Now it has been suggested here, Senator, and I want to emphasize it again, that at Nuremberg, it was not possible for us to punish the defendants for many of terrible things they did to people in peacetime, things that were clearly genocidal in character. That is one of the reasons why I am interested in seeing this convention adopted.

WILLING TO SETTLE FOR WHAT WE HAVE

Now I don't suppose that this is perfect; most of the things that fall from the hand of man are not. We are entering into a new field. It fascinates me that the members of the committee upon which I am privileged to serve offer as one of their objections that it does not go far enough, and I am inclined to agree. I wish it included political and economic groups, but I know we can't have everything at once in the nature of international cooperation. I am willing to settle for the good things that we can get, in the hope that later on we will be able to enlarge this field and perhaps get political and economic groups included. But I can't understand opposition, if you are for this thing, opposition that it doesn't go far enough.

MIGHT HAVE DETERRED HITLER

You have been asked what good would this have been against Hitler. I am one of those who believe, after living 18 months over there among the Hitler regime, that had this Genocide Convention been in existence in the early days of the Hitler regime, what happened might not have happened. For one thing, the Nazi state would have stood condemned. Its ministers and ambassadors would not stand in the same position as those of other nations not in violation of a genocidal convention, and great numbers of people inside Gemany would have taken heart and might have been more vigorous in their resistance to the regime itself.

You have been asked what can we do about the Russians, who are perhaps and probably doing this same sort of thing behind the iron curtain now. Well, at least we will have the moral influence of the covenant of the convention. Russia in its plan, as I see it, wishes to influence people all over the world. If people all over the world see Russia as a nation which does not subscribe to or adhere to the Genocide Convention, she will be severely affected in her efforts to influence people everywhere, and the forces of good thinking and of right conduct in the world will be immeasurably strengthened.

I am not going to dwell upon the constitutional difficulties. I am one of those who believe with the Solicitor General that there are no insurmountable constitutional difficulties. These kinks can be worked

out. I think, furthermore, that the good advice that you and your committee, the Senate, will get from capable constitutional lawyers will help to work that out.

MENTAL HARM

I would like to take just 1 minute to tell you that on this question of mental harm, I know what that means, having heard it from the mouths of people who knew what it meant subjectively. It was an established mechanism of the Nazi state, and it is practiced in other places as well, that the destruction, the disintegration of the human mind was a planned thing. It was one of the worst things that was done probably to individuals by the Nazis, and it is not too difficult for people who want to learn about it to read the records at Nuremberg, and they will have a very clear concept, when they have done so, as to what happens to people unded a planned program of destroying their minds. There are all kinds of ways of doing it, and there are many, indeed.

I think we need to adopt this and ratify this convention, because the world needs that moral support. I can't imagine the United States refusing to do so, in a world that looks to us for moral leadership, and we will give hope to people everywhere in the world if we do ratify it, and I, as an individual, urgently suggest to your committee that it favorably view this ratification proposal.

Senator McMahon. Thank you, Mr. Dodd.

I have a letter from Senator Ives, which I will place in the record.

(The letter from Senator Ives is as follows:)

I am deeply concerned that the United States Senate has not yet ratified the Genocide Convention which was adopted by the General Assembly of the United Nations well over a year ago.

Certainly there can be no sound reason for delaying longer action by the Senate which would so substantially advance the most appropriate and intelligent method yet conceived for outlawing the monstrous crime of genocide.

The United States has a long and highly enviable record of leadership in international morality and justice. The civilized nations of the world look to us to sustain that leadership.

Support of the United Nations, moreover, is the keystone of this country's foreign policy. It is significant that the Genocide Convention was approved without a single dissenting vote by the General Assembly, largely due to the vigorous and inspired efforts of the United States Delegation. Early ratification of this important treaty obviously will provide considerable encouragement for its adoption by other member states of the United Nations.

It would seem imperative that we act promptly. The press of other legislative matters cannot conceivably be so great as to militate against our taking as soon as possible a step which would do so much to strengthen those principles of sheer human decency and respect for the dignity of the individual which have traditionally guided the Nation's conduct in international affairs.

IRVING M. IVES.

Senator McMahon. There are also two other items for the record, one a statement by the board of trustees of the Washington Ethical Society; the other by David L. Ulman, chairman of the National Community Relations Advisory Committee.

(The statements referred to will be found on pp. 535–536.)

Senator McMahon. We will now have to recess, and we will meet tomorrow morning in the Caucus Room at 10:30.

(Whereupon, at 5:50 p. m. Tuesday, January 24, 1950, the subcommittee adjourned, to reconvene the following morning at 10:30 a. m.).

THE GENOCIDE CONVENTION

WEDNESDAY, JANUARY 25, 1950

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
SUBCOMMITTEE ON THE GENOCIDE CONVENTION,
Washington, D. C.

The subcommittee met, pursuant to adjournment on January 24, 1950, in room 318, Senate Office Building, at 10:30 a. m., Senator Brien McMahon (chairman of the subcommittee) presiding.

Present: Senator McMahon.

Senator MCMAHON. Mr. Fisher, as I understand it you want 15 or 20 minutes in which to comment on some of the material that was submitted yesterday.

STATEMENT OF ADRIAN FISHER, LEGAL ADVISER, DEPARTMENT OF STATE

Mr. FISHER. Yes, sir, Mr. Chairman, I would like to.

I would like to make it clear at the outset that in referring to the arguments of Mr. Schweppe, Mr. Rix, and Mr. Finch I do so with great personal cordiality and respect. I may on occasion, and I am sure I will, differ with them violently, but it is with their ideas and not their motives and not with them as men.

Senator MCMAHON. The motives have nothing to do with it. What we have to test this testimony on is law and fact.

Mr. FISHER. Law is the naked light of truth, sir.

Senator MCMAHON. I do not care what the motive was. The point is, what did they say, and not why did they say it?

Mr. FISHER. That is exactly the spirit in which I would like to begin my remarks, sir, because I have the greatest respect for all three of them.

CONSTITUTIONAL ASPECTS OF ARTICLE VI

At the outset I was delighted to hear Mr. Finch say in his testimony yesterday that the only provision in this convention which he felt was actually unconstitutional was the second half of article VI. I would like to read article VI in its entirety and focus on the second half, so I can indicate precisely what I believe he had in mind. Article VI provides as follows:

> Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

It is the second portion, "or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction" which Mr. Finch felt might be subject to constitutional attack, and that section alone.

I would like——

Senator McMAHON. That is on the basis of the constitutional guaranty of a trial by a jury of his peers.

Mr. FISHER. Yes, sir.

TRIAL BY JURY

No such provision is before the Senate at this time. It is true that the International Law Commission of the United Nations is studying the problem of an international penal tribunal, and constitutional lawyers have expressed violent opinions pro and con and moderate opinions pro and con as to the advisability and the policy involved in such a study, but the United States, it is made clear by this article, is under no commitment to accept in advance, or even after the final product has come up, the results of any such study. What we are buying here as an operative document is article VI, the first three lines, ending with "of which the act was committed." Any further commitment on the part of this government requires the action of the Executive and the concurrence of the Senate, and it is not before the Senate at this time, and by acting on this convention there is no commitment, either expressed or implied, to take any action which this Senate feels might be inconsistent with the Constitution of the United States.

INTERNATIONAL PENAL TRIBUNAL

I must confess that I am a little bit at a loss, however, in view of the attack which has been leveled on this particular provision as being contrary to the specific provisions of the Constitution and the Bill of Rights, articles 1 to 10, to find that in the hypothetical revised treaty which both Mr. Schweppe and Mr. Finch say they would support such an international penal tribunal plays an important role; and in fact they have said this proposed convention is worthless because they do not believe an international penal tribunal would be appropriate in it. How they propose to get over the constitutional defects which they see in this article, which is not at all in this present treaty, in the hypothetical treaty which they say they would support, is not at all clear to me.

TREATY NOT SELF-EXECUTING

The next point I would like to deal with is the problem of the treaty being self-executing, particularly with respect to civil liability.

We were reminded with considerable force that article VI, clause 2, of the Constitution provides that the Constitution, the law of the United States, and treaties, shall be the supreme law of the land, and suggest that this puts us on an entirely different footing from other countries in the treaty-making process. It is perfectly clear, from the decisions of the Supreme Court, that a treaty is not self-executing, that is, immediately operative on domestic law, unless it by its own terms purports to do so.

There was a case decided on that by Chief Justice Marshall in 1829 which has never been questioned as authority, and from which I would like to read the appropriate extract, to make clear what is involved in this case.

In this case the great Chief Justice said as follows, and I quote from page 314 of 27 United States Reports:

> Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the political, not the judicial, department, and the legislature must execute the contract before it can become a rule of the court.

It is clear that, whether or not a treaty is self-executing, the legislature has an international legal commitment to execute the contract. But let's take a look and see what that international legal commitment is.

ENGAGEMENT TO ENACT IMPLEMENTING LEGISLATION

Article V of this convention provides as follows:

> The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.

That is conspiracy, and so forth.

It is quite celar to my mind that the only obligation assumed by the United States is to enact legislation of the type referred to in this article of the convention, and that legislation must deal directly with criminal or preventive acts, and has no bearing whatsoever on the question of civil liability.

A PENAL CONNECTION

In this particular connection you might be interested in referring to the various provisions, to the other operative provisions, of the convention. All of them make it clear it is a penal convention.

Article I says "prevent and punish genocide"; article III refers to the following crimes as "punishable"; article IV also uses the term "punished" when referring to the constitution and responsible rules. The only reference to anything other than punishment is a section in article IX relating to the International Court of Justice, and that relates to the international adjudication in the Court of Justice which by its own statute is adjudication between sovereign states.

It has been claimed that there is some implied admission of an automatic civil liability from the statement of understanding in the President's transmission. To my mind this is completely inaccurate. Before I get into that, I would like to make one distinction which I believe was blurred over yesterday. That is the distinction between an understanding and a reservation. An understanding is what a country does when it either signs or ratifies a treaty or convention in which it says what it thinks it is agreeing to. A reservation is what a country does when it signs or ratifies a convention in which it indicates that it is not willing to live up to the full obligation implied in the convention. That is a well-recognized distinction in international law, and one of the most effective articles on it, in which

understandings are referred to by their other name, notes of interpretation, is an article in the American Journal of International Law by Prof. Quincy Wright.

RESPONSIBILITY OF A STATE

I would like to read the statement of understanding, in hopes that it may clear up some of the misapprehensions concerning it. The proposed statement of understanding states that the understanding is to be that—

article IX shall be understood in the traditional sense of responsibility to another state for injuries sustained by nationals of the complaining state in violation of principles of international law, and shall not be understood as meaning that a state can be held liable in damages for injuries inflicted by it on its own nationals.

Let us read article IX, to which this understanding is directed:

Disputes between the Contracting Parties relating to the interpretation, application, or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

The words that caused this understanding are the words "responsibility of a state." In considering the necessity for it, we must realize that the words "state responsibility" is what lawyers would call a word of art in international law, and it traditionally means the responsibility of one state in damages to another state whose nationals it has injured.

Indicating the large amount of lore that has been built up about it, chapter 18 of Hackworth's Digest, contained in volume 5, is a whole chapter on it, a chapter entitled "State Responsibility and International Claims."

When this language was proposed in the convention the United States wanted to make it clear that it felt that the interest which this country or any other country could properly have in acts of genocide, in preventing acts of genocide by another state on its own nationals, was not a monetary interest. This convention was not attempting to put a price of head money on the Jews that were killed at Auschwitz. Its purpose was to brand any person committing this heinous crime as an offender against international law and against the law of nations and to have him condemned before the bar of justice. We did not want to make this a small claims court or a damage proposition. This was important in the moral sense, in which we did not want to sully our hands with something that might be called blood money in a case of this kind. That is all the understanding means and all it is intended to mean.

NO CIVIL LIABILITY IMPLIED

The statement that it implies any admission of direct civil liability on some self-executing basis is completely erroneous, and to state that it in any way condones genocide when committed by a ruler on his own nationals is not only erroneous but completely mischievous.

I think that is made quite clear by article IV, which includes constitutionally responsible rulers as people who are to be punished, and there is no understanding on that.

STATES RESPONSIBLE FOR ACTS OF GENOCIDE WITHIN THEIR BORDERS

Senator McMAHON. What have you to say about the alleged retreat of our delegation in the matter of holding states responsible?

Mr. FISHER. States, or the rulers of states? States are still responsible in an international court for acts of genocide committed in their borders. That is, another state can haul them up before an international court or before the Security Council or before the organs of the United Nations, and allege that an act of genocide has been committed.

Senator McMAHON. If genocide is being committed anywhere in the world today it is in the Soviet Union. What is the remedy there at the present time, then?

Mr. FISHER. The remedy there at the present time, due to this reservation on the International Court of Justice, is an appeal before the appropriate organs of the United Nations to investigate and to call upon the Soviet Union to aswer this charge. That is the only remedy that is available at this time. It is to my mind not a bad one. The Soviet Union does not want to stand branded in the eyes of the world as a committer of genocide.

Senator McMAHON. Well, that is the thing they are doing, according to reports. Of course, you cannot get any commission in there; you cannot get any inspection in there to find out, to say nothing of bringing them before an international court.

Mr. FISHER. Occasionally, sir, in acts of this kind, refugees get out. We knew, with reference to Germany, long before the end of the war of the horrors of Auschwitz and Dachau. It would be possible, and I do not like to speak of any specific case because at some later day either I or my associates might be involved in actions of this kind if this convention is ratified, to build up by sources which are available, a case. It is not the best of all possible worlds, for enforcement is not as strong as I would like it, but the question is, with that enforcement that is all that is available to us at the present time, do we say that that is so little that it is not enough, that we want to forget about the whole convention?

THIS CONVENTION WOULD HAVE APPLIED TO HITLER ACTS

Senator McMAHON. I am not saying that. I think it is important. I think the important thing, the important point that the opponents made yesterday, or it seemed so to me, was the fact that the public must not get the understanding that Mr. Hitler in his heyday would have been subject to the provisions of this convention.

Mr. FISHER. No, sir. I believe, had this treaty been in effect——

Senator McMAHON. Nor are his counterparts today subject to the terms of the treaty.

Mr. FISHER. No, sir; I disagree with that.

Senator McMAHON. All right. How are you going to get at them?

HOW THE CONVENTION IS APPLIED TO GOVERNMENTS

Mr. FISHER. We have two questions. When you say "subject to the terms of the treaty," there are two terms. By the terms of the treaty, as a constitutional responsible ruler he is responsible. Hitler certainly indicated that he regarded a lie not only as a defense but as

an affirmative instrument of policy. But the truth has a way of coming out, sir, and if we are considering the over-all foreign policy and the foreign policy objectives of the United States, the fact that certain groups may be inimical to it, for a time may be able to deny violations by means of fraud and deceit, and we may have no marshal who can serve a writ in a foreign country——

Senator McMahon. Suppose, though, they do denominate 500,000 Estonians or Latvians or Ukrainians as enemies of the state and say they are plotting revolution, and they kill them. That would not come under this treaty; would it?

Mr. Fisher. It depends upon whether or not the international bodies before which this matter came, and under the present reservation of the Soviet Union these international bodies could be only those representing in an effective way the conscience of the world, were satisfied that this defense was a good one. We do not strike the plea of self-defense from the law of murder because it has been pleaded incorrectly many times. And it seems to me that an objection to this convention because of its inclusion of the words "as such," which in my mind are necessary parts to a precise convention, and which only were put in in substitution of somewhat more prolix language saying the same thing, is like objecting to a statute of murder because a person charged with murder pleads self-defense and gets away with it when it wasn't true.

U. S. S. R. IS STILL LIQUIDATING MILLIONS OF PEOPLE

Senator McMahon. Yes; I realize there is truth in what you say, but on the other hand the fact does remain that they have liquidated some 20,000,000 of their own people since they have been in power, since 1918. They are continuing that process, and this treaty does not define the crime that they are committing; is that not true?

Mr. Fisher. I do not agree with that, sir, because it depends on questions of fact. I would like to go a little bit into what I consider the crime today. If we were to ratify this convention, this country and other countries similarly affected—and I do not like to talk about individual cases—would be in a position to charge before the appropriate organs of the United Nations that these deportations, that these killings, were not in suppression of religion but for the purpose of exterminating a national group whose existence within the territorial boundaries of a particular state was considered by that state to be contrary to its objectives.

Those facts would be determined not by one country alone pleading self-defense, but would be determined as is often done in the courts of our land. Those facts, in the real meaning of this convention, would be determined by the world.

PLEA OF SELF-DEFENSE IS NOT VALID UNDER THE CONVENTION

If we were not to ratify this convention on the ground that the plea of self-defense might be made, the Polish groups, the Estonian groups, all of whom appeared here to urge the ratification of this convention, would be denied even their day in court, their chance to be heard and to claim that this was not self-defense, to claim that this was rather a deliberate and purposeful act of genocide. Those groups have

frankly urged the ratification of the convention, and they do so with a full understanding of what it means, and they do so with full recognition of the fact that in any international obligation terms of precision may involve questions of fact.

To say again the analogy of self-defense in a murder trial, if we were not to ratify the convention they would not even get a day in court, a day before the bar of world opinion, before the bar of the conscience of the world, to contend that a deliberate act of genocide was being inflicted on them, and I believe it is for that reason they propose the ratification of the convention in its present form, not some theoretical "go back and start over" with the hope that 10 years from now, 5 years from now, we might come up with one which, in an unhappily imperfect world, was perfect.

The people directly involved urge ratification in its present form, and they do so with full knowledge that that ratification is essential to give them the support they need to get their day in court before the bar of world public opinion.

AS TO THE ARGUMENT THAT THE CONVENTION GOES TOO FAR

I would like to go on with another point, sir, in terms of an argument not that the covenant goes not far enough, but the argument from the other side, that it goes too far, and that is the problem of the use of the words "in whole or in part" and the argument that has been made that the killing of even one person for racial reasons, a race riot in any part of the country, might be an act of genocide, and if this country did not make that the subject of a Federal statute we would be held in violation of our treaty obligations.

In making my observations on that we, of course, all know, and I think Mrs. Carter stated it very well yesterday, that we are not in any way saying anything about the horrible matter of lynching or any form of race hatred. We are just saying that this convention does not deal with it. This convention does not deal with all of the ills or evils in the world, and that is one of them.

In considering the insertion of the words "in whole or in part" let us consider two cases, one historical but of necessity hypothetical.

Assume this convention had been in effect. Mr. Hitler was called before it with reference to the killing of the Jews in Germany, and he was able to say, which I believe to be substantially accurate, that he probably did not intend to kill every single one.

Senator McMahon. I don't know aout that. I think he did.

Mr. Fisher. I think that there were certain groups which he considered were made honorary Aryans. He did not have a plan to have every person of Jewish descent, or he might not have had a plan, killed, and should we make a lawyers' debating point as to whether or not in a crime of that magnitude there were perchance some favored few that had been excepted?

Let us consider another question. Let us consider a hypothetical case. I say hypothetical with a deep hope and prayer that it may never arise, but in which there is a plan to kill, say, all of the Catholic priests in a particular country, and that plan is for the purpose of destroying the Catholics as a religious group. There was no plan to kill all members of the Catholic religion, but the hope was, which I am sure the history of religion would prove unfounded, and the plan

was, that by the elimination of the leaders the group would dissolve and cease to exist as a religious group.

NOT NECESSARY TO KILL ALL MEMBERS OF A GROUP TO CONSTITUTE GENOCIDE

The Norwegians proposed this amendment, "in whole or in part." I believe it is quite clear from the legislative history of this convention that they had cases of that kind in mind. In answer to a specific question from the United States representative as to what he had in mind by proposing this amendment, the Norwegian delegate said he simply wanted to point out that with regard to the first of the acts enumerated—that is, murder—it was not necessary to kill all the members of a group in order to commit genocide. The fact that a single lynching for racial reasons, however horrible, was not covered, is shown by the fact that the French delegation did propose an amendment, and the amendment they proposed was that acts committed with the intent to destroy a group be replaced by words "an attack on life directed against a human group, or against an individual as a member of the human group."

That amendment after being discussed, and with general feeling that this did not accurately reflect the crime that was attempted to be dealt with, was withdrawn.

"MAJOR PORTION OF THE GROUP"

Senator McMahon. What did you think of the suggestion that was made yesterday, that the word "major" be inserted: "major portion of the group"?

Mr. Fisher. Here is my reaction to that, sir. To my mind it is clear from the legislative history of this convention that there must be, in the first place, a plan directed against a group, and the group means the group in the country. It does not mean the group in a ward or a block. It means the group in a country.

And, secondly, that activities of the type mentioned in article III, killing, taking away children, and so forth, must be of a sort to affect a substantial number of the group.

It is my feeling that in passing a statute, which it has to do to carry out the obligations of this convention, Congress has the right to rely on international legislative history and to clear up any points of this kind which may have resulted from this discussion of "in whole or in part" in the committee in Paris when this matter was being considered. I think it means that. I think that is what people intended to make it mean, and I think Congress in passing a statute could act on that assumption.

MENTAL HARM

I would like to pass to one further point, sir, in terms of the argument that the convention goes too far, and that is the problem of mental harm. It is clear from the legislative history of this language that what was meant was not just embarrassment or hurt feelings, or even the sense of outrage that comes from such action as racial discrimination or segregation, however, horrible those may be. What was meant was permanent impairment of mental faculty.

JAPANESE OPIUM TRAFFIC IN CHINA

The case that was specifically in mind was the claim of the Chinese with reference to the dissemination by the Japanese of opium drugs to the Chinese. The history of the last year has shown that there can be systematic attempts to cause permanent impairment of a man's mental faculties without the use of drugs by systematic terror, by lack of sleep, by the various tactics with which the conscience of the world was shocked when they had apparently been applied to Cardinal Mindzenty before he appeared in the courtroom. These things are vicious enough that they should be expressly prohibited and should not be left to any theoretical lawyers' argument as to whether or not this type of permanent impairment of the mental faculties is included in the definition of serious bodily harm or not. We should hit the snake where we see it, and not hope to catch him in a ricochet from something else.

Again, I think the legislative history of this article makes it clear that Congress would be justified in living up to the international obligations of this country in writing a statute on the basis that all that was dealt with was permanent impairment of mental faculties, and I think that is a sufficiently horrible crime and a horrible method of carrying out crimes of this kind so that it should be mentioned by name.

INCITEMENT AND COMPLICITY

There is one other point, sir, which has been raised, and that is the problem of incitement and complicity. Incitement was originally opposed by the United States representative on the grounds that it was not necessary, because of the definition of attempt and conspiracy. However, when it was voted in the United States did not oppose it, and I do not believe that this is in any way in violation of our constitutional system.

THE GIBBONY CASE

The brief of the Solicitor General cites the Gibbony case, in 336 U. S. In that case, which incidentally involved certain picketing activities, Justice Black, speaking for a unanimous court, said as follows:

> It has rarely been suggested that the constitutional freedom for speech and press extends its immunity in speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now.

We think that in acting on this portion of the convention the Senate would come clearly within the authority of the Supreme Court in the unanimous opinion of *Gibbony* v. *Empire Storage Company*, a case that has already been cited to you.

THE TERMINIELLO CASE

It is quite clear also that there is nothing in the Terminiello case that changes this opinion. In that case the decision was based on a charge which would include the words "stirring the public to anger, inviting dispute, brings about a condition of unrest, or creates a disturbance." To say that a charge included in those words, which was

held to be unconstitutional, can be made comparable to incitement to genocide, the horrible crime of genocide, is, I think, a completely unacceptable comparison.

COMPLICITY

Some mention has been made, also, of the use of the word "complicity." While complicity as a word is not usually found in United States criminal codes, it has exactly the same meaning as "aiding and abetting"; and as the chairman knows, that is a recognized concept of United States criminal law.

FEDERAL-STATE RELATIONS

I would like to deal only briefly with the question of Federal-State relations and point out that what is before the Senate is this Genocide Convention, nothing else. To my mind, based on the evidence of history and the two resolutions of the General Assembly which have been passed, there is no doubt that Congress could define genocide as a crime against the law of nations. In doing so it would be acting under a specific constitutional provision, article 1, paragraph 8, clause 10 of the Constitution.

We are criticized because it is claimed that we are relying upon the migratory bird case. I personally do not consider it is unethical to come before the Senate and place your reliance on a case which has stood unchallenged for 30 years. In this particular case I am not doing so, because it does not appear to me to be necessary to rely upon the treaty power alone to support this convention.

United States v. *Arjona*, decided in 1887, clearly supports a Federal statute implementing this convention, and therefore it is hard to see how the convention would have any effect in granting Congress a power it would not otherwise have, or drastically change the relation between the States and the Federal Government.

It also should be pointed out that in *United States* v. *Arjona*, which held that Congress could constitutionally define counterfeiting of foreign bank notes as a crime against the law of nations, it was specifically said that nothing prevents the State from acting. I would like to read just a section of that opinion because of the charges made here that we are taking over a large section of State authority. Mr. Chief Justice White, referring to the crime against the law of nations, says as follows:

> This, however, does not prevent a State from providing for punishment of the same thing, for here, as in the case of counterfeiting the coin of the United States, the act may be an offense against the authority of a State as well as that of the United States.

That was acceptable law then, it is acceptable law now, and nothing that has been said in the last 2 days can change it.

AS TO THE CONVENTION NOT GOING FAR ENOUGH

I would like to conclude on just one point, sir. This convention, it has been argued, goes too far. It has been argued it does not go far enough, and it has been argued that it will hurt rather than help our foreign policy.

ITS EFFECT ON OUR FOREIGN POLICY

Now, the question of whether or not this convention will hurt rather than help our foreign policy is a question which I as a lawyer, whose qualifications are primarily technical, must of necessity approach with a great deal of humility. But I do think that when we consider that such men as General Marshall, John Foster Dulles, Senator Austin, Secretary of State Dean Acheson, and the President of the United States have all urged the adoption of this convention in its present form as the best way to show that this country is prepared to stand and be counted in terms of the moral position which it has before the world, I hope that this committee, and I know that this committee, will consider the views of these men in making up its own mind as to whether or not this is an important thing from the point of view of the foreign policy of the United States.

Thank you very much, sir.

Senator McMAHON. Mr. Fisher, thank you very much. You are going to give us a memorandum, too?

Mr. FISHER. Yes, sir.

STATE MIGHT COMMIT GENOCIDE WITHOUT BEING HAULED BEFORE THE INTERNATIONAL COURT

Senator McMAHON. In your opinion, Mr. Fisher, it would not be possible for a state to commit genocide without getting hauled up for it?

Mr. FISHER. I think so, sir. That does not mean that there is an automatic, immediate, painless and effective way of preventing it, but somewhere, some way, the truth will out, and the international organs, which may have as their only marshal the conscience of the world, can still act, and we should not underestimate, and I know this committee will not, the strength of that invisible marshal, the conscience of the world.

Senator McMAHON. Thank you.

The next witness is Dr. Brendan F. Brown, dean of the Law School of the Catholic University of America. Dean Brown.

(A brief recess was taken.)

Senator McMAHON. Now we will have Dr. Brendan F. Brown, dean of the Law School of the Catholic University of America. Doctor Brown.

STATEMENT OF DR. BRENDAN F. BROWN, DEAN OF THE LAW SCHOOL, THE CATHOLIC UNIVERSITY OF AMERICA

Dr. BROWN. Mr. Chairman, I am interested in favorable action on this convention by the Senate of the United States because I believe such action is indispensable for the strengthening of a concept of international law necessary for world society in its quest for peace.

At the outset I wish to identify myself as a member of the scholastic school of natural law. May I say that in this great debate the explanation for the divergent views of great lawyers is to be found in the particular type of jurisprudence which they espouse, whether that jurisprudence is expressly or implicitly present.

In my opinion, those of us who subscribe to what has been called a natural law school of jurisprudence will support this convention regardless of the many minor analytical objections which can be presented by constitutional lawyers who take an analytical view of law. Those who reject the essential moral basis of every legal system, whether it be international or not, will no doubt be able to find insurmountable reasons in our Constitution why this convention should not be ratified.

I had a part, as juridical consultant to the chief of prosecution at the Tojo trial in Tokyo, and I am interested that this Nation shall continue by every possible action to go forward with the basic legal philosophy which constitutes the basis of these two trials. This philosophy postulates the existence of an international common law of crime. It premises the fact that individuals as well as nations are responsible for criminal action under this body of law, and there is assumed the necessity of some kind of a compromise by the nations in their procedure whenever this international criminal law is administered in an international tribunal.

Just because there was no trial by jury at Nuremberg and Tokyo does not mean that these trials were unjust. The fact that the so-called hearsay rule of evidence was not followed at these trials is no reason why they were unjust. It is obviously provincial for any lawyer in this country to assume that we shall impose upon the nations of the world our precise and particular conceptions of trial practice, and if we do not take the conception which the great fathers of the science of international law took, namely, that international law in substance and in procedure shall be a composite of that law which is found in national systems, it will be impossible for us ever to establish an international court of effective jurisdiction.

CONVENTION THE RESULT OF COMPROMISE

It is apparent that this convention was the result of compromise and expediency, caused by the conflicting positions of the representatives of many nations. No one regards the convention as perfect, but it is necesasry to remember that if this convention is now rejected, no one can predict when the members of the United Nations will be able to agree on a more acceptable draft of a Genocide Convention. I approve, therefore, this convention, despite its manifest weaknesses and limitations.

I dare say that if we were to ask the critics of this convention to present a precise draft there would be as many drafts as there were lawyers asked to do this, and therefore we must realize the practical problems implicit in any kind of an effort of this sort, namely, that there must be action within the limits of practicality.

PREAMBLE

Now the preamble of this convention states, among other things, that genocide has inflicted great losses on humanity in many periods of history. There is no question about the accuracy of that statement. The crime of genocide has been committed in many lands and has been perpetrated against diverse groups and classes of persons. It was committed when the early Christians were the object of brutal attack

by the Roman state. The many persecutions of the Jews furnish illustrations of the crime of genocide. The killing of Moslems and Hindus on the subcontinent of India was a manifestation of this apparently perennial international law crime.

It was therefore fitting and proper that the preamble of this convention should state the conviction of the General Assembly of the United Nations that the time has now come for international society to endeavor to liberate mankind from the odious scourge of genocide. For this purpose, international cooperation is obviously required. As a Nation, the United States has not been guilty of genocide, so that it occupies a unique position of power and moral influence in espousing the present convention.

The preamble of the convention states that the General Assembly of the United Nations on December 11, 1946, declared that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world. In other words, the United Nations found that international law already outlaws the crime designated by the word "genocide."

CONVENTION MERELY CONFIRMS WHAT IS NOW INTERNATIONAL LAW

The United Nations did not make criminal the acts included in genocide by any international social contract. The contracting parties of this convention are called upon, therefore, by article I, merely to confirm the fact that genocide is already an international law crime by means of a multinational contract, and to punish it with adequate penal sanctions. The idea that there is already an objective body of existing international common law of crimes coincides with the concept which was adopted by the United States toward the end of World War II, and which was the basis of the Nuremberg and Tokyo trials.

CONVENTION BASED ON SIXTEENTH AND SEVENTEENTH CENTURY PHILOSOPHY

Implicit in the preamble and article I of the convention is the acceptance of a philosophy of international law and politics which upholds that of the founders of the science of international law, in the fifteenth and sixteenth centuries. I refer to such authorities as Saurez and Grotius. In my opinion, that philosophy now deserves the support of the United States both for idealistic as well as selfish and utilitarian reasons. The philosophy to which I refer emphasizes the moral basis of law and society. It supports the position that in any primitive or immature society, whether it be national or international, as long as the juridical institutions, procedures, and processes of the legal order are in a retarded stage of evolution, morals are the sole medium of social control and discipline. Hence they may properly be called law, under these circumstances. By morals, I mean the objective aggregate of norms which are imposed upon all men in all their social relationships, as a result of human nature and the ends established for man by his Creator. These norms distinguish between right and wrong, good and evil, the normally rational and the pathologically irrational.

ARTICLE I

Article I calls upon the contracting parties to confirm the fact that genocide is a crime under international law whether it is committed in time of peace or in time of war, and to prevent and punish it. Obviously there is no essential difference in the nature of this crime, whether it be committed as such, or as collateral to the preparation or the waging of war.

It is true, of course, that the Nuremburg Tribunal interpreted its charter in such a way as to avoid jurisdiction over those accused of genocide, on the grounds that the tribunal had jurisdiction only over war crimes; that is, crimes connected in some way with war. But war does not determine the existence of the crime of genocide, although this crime naturally tends toward the disturbance of world peace, and hence is often the occasion of war. War is only one of a number of activities which disturb the international social interest, though unquestionably it is the most disruptive. But genocide also radically disturbs that interest.

JURIDICAL CONCEPT IS ANCIENT

The word "genocide" is new, but the juridical concept which the word signifies forms part of an idea which is ancient. Genocide was declared to be an international law crime in 1946, but a concept broad enough to include genocide was recognized centuries before by some of the great medieval writers, who believed in a scholastic natural law. They advocated a form of the doctrine of tyrannicide which accorded a right under international law to any righteous ruler, acting for world society, to resort to war, if necessary, against any ruler who was inflicting gross injustice against his subjects, as such, or as members of groups, who were unable to exercise their juridical right of revolution to overthrow the criminally unjust despot. The bona fide representative of world society might exercise this right to use force even to the extent of war. The particular crime which evoked this form of the doctrine of tyrannicide was essentially the same as the crime now described as genocide. Genocide may not adequately be comprehended, unless it is based on the concept of the spiritual, mental, biological, and moral solidarity of the human race, and on the ideal of the brotherhood of man, which in ultimate analysis constitutes the substratum of global society.

ARTICLE II

Article II of the convention enumerates the various acts by which genocide may be committed. These acts must be committed with a specific criminal intent to destroy in whole or in part, a national, ethnical, racial or religious group as such. This destruction may be accomplished by killing members of the particular group, causing them serious bodily or mental harm, or inflicting upon them conditions of life calculated to bring about the physical destruction of the group in whole or in part. Moreover, the imposition of measures to prevent births within the group, or the forceful transfer of children of the group to another group, would also constitute genocide.

Article II undertakes to describe the nature of the crime of genocide, therefore, by the enumeration of various physical acts. In my opin-

ion, however, the nature of this crime may not be properly understood by such enumeration. The language used in the convention has unfortunately not included moral terminology or a nomenclature, which refers to the factors of justice or morals. Such words as "odious scourge" in the preamble conceal the real essence of the evil act of genocide. The nature of this crime might have been described with greater accuracy than was done in the language of this convention, when viewed against the background of natural or higher law. The criminality of genocide is plain from the fact that it is a most unjust attack by the leaders of states or powerful groups upon a class, or group, deriving its homogeneity from strong ties of nationality, kinship, race, or religion. The attack is intended to destroy the group in whole or in part by physical, mental, biological or environmental methods. The onslaught is systematic, calculated, and continuous, and on the highest national level.

The destruction of the group is unjust because the members marked for destruction are innocent, having committed no act which deserves punishment, according to the standards of the higher law, accepted by civilized peoples since the advent of history. Members of the group are deprived of their fundamental rights of personality, only because of their identification with the particular group or class, as such. The moral and juridical values of groups, which deserve protection by this convention, are ultimately derivable from the inviolable sacredness of the human beings who make up the group. The act is criminal on the international plane because it is a grave peril to the interests which the family of nations has in the maintenance of peace by the just exercise of political authority on the part of every nation toward its citizens or subjects. An unjust destruction of any minority, or indeed of a majority, should the State be under the control of a tyrannical minority, is actually an attack upon the security and survival of all nations. The criminally guilty state must be eliminated as a member of world society by the removal of its leaders and by the infliction of penal sanctions upon them.

It is significate to note that article II requires a specific criminal intent, and therefore conforms to an essential requirement found in the legal systems of all civilized peoples. The acts which will cause genocide, as enumerated under article II, implicitly recognize rights of personality, and are explicit in including acts which directly or by indirect causation produce the act of genocide. But the convention is neither a declaration of the rights of individuals under international law, nor a specification of civil liberties.

ARTICLE III

Article III makes criminal not only genocide, but also preceding actions which are closely connected with it by way of cause and effect. These preceding acts may be conspiracy to commit genocide, direct and public incitement to commit genocide, or an attempt to commit genocide. Complicity in genocide is also made punishable as a crime. An overt act would apparently be required for the crime of conspiracy to commit genocide. The international criminal law stated in article III is justifiable insofar as it is based upon common areas of agreement existing in the legal order of the great nations. Article III respects the fundamental principle that the content of international

law is to be determined in a large measure by combining concepts of criminal justice common to the peoples of the world. It is important to point out that direct and public incitement to commit genocide is made punishable, but not merely propaganda directed at a particular class or group. Article III (c) contains nothing which contravenes American constitutional or legal standards of free speech or expression.

ARTICLE IV

Article IV states that persons committing genocide, or any of the other acts enumerated in article III, are punishable, whether they are constitutionally responsible rulers, public officials, or private individuals. This covenant does not relate to sporadic manifestations of race violence in certain parts of the country; the lynching of colored persons by an irresponsible mob would not be genocide. But a plan by the United States to destroy the colored race, in whole or in part, would be genocide, likewise direct public incitement to do so, with at least the implied approval of public authority. Lynching is criminal under domestic laws, but as it now occurs in the United States it does not reach the plane of an international-law crime, because the scope of the act is not of such gravity as to warrant the interference of the family of nations. The implications of the act are not of world-wide scope. The act is evil, unjust, and criminal, but it is a matter which adversely affects the interest of only one nation.

The words "constitutionally responsible" were placed before the word "rulers," in article IV, to avoid ambiguity as to the responsibility of certain rulers. Some rulers are mere figureheads in the sphere of government. It would manifestly be unjust to hold a ruler responsible for the crime of genocide if he were personally nonresponsible.

CAN A SOLDIER COMMIT GENOCIDE

Senator McMAHON. How about a person, Doctor, say a soldier, being ordered to commit genocide? Would he have an escape clause?

Dr. BROWN. The idea of responsibility which is implicit in your question was raised very much in the Nuremberg and Tokyo trials.

Senator McMAHON. Yes.

Dr. BROWN. And my reaction to your question is that the individual soldier may be presumed not to have a knowledge of certain facts. Perhaps if he did not believe that he was committing an evil act there would be subjective justification, but if he committed an act of genocide knowingly, it would be equivalent in evil essence at least to an act of murder.

ARTICLE VI

Article VI provides:

> Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

This article limits the assumption of obligations to the prevention and punishment of the crime of genocide by trials in Federal courts. It does not commit the United States to the establishment of an inter-

national panel tribunal with original jurisdiction for the trial of persons accused of the crime of genocide.

I support this article, although in my opinion it is unfortunate that the issue of our participation in the establishment and functioning of a tribunal for the administration of international criminal law is not met now. Either the United States should forthrightly admit the existence of an objective body of international common law of crimes, or else reject it. If it admits the existence of such a law, logic and honesty demand that we support a permanent tribunal for the admin·itsration of this law, which preferably should be codified. At Nuremberg and Tokyo, this Nation admitted the existence of such international criminal law and applied it in ad hoc tribunals. Is it not obvious that such tribunals are not as adequate for the administration of such international criminal law as would be a permanent court? If there is an international common law of crimes, the United States is as much subject to it as any other nation. The concept of American sovereignty as well as the sovereignty of every other nation must be interpreted in such a way as not to interfere with the participation of nations in the creation of a permanent institution for the administration of international criminal justice. But if the United States does not believe in a body of international common law of crimes, then it should act accordingly. In such an event, of course, there would be no problem of our juridical duty of participation in the establishment of an international criminal tribunal.

Article VI avoids taking a position as to the nature and existence of international law. I support the article only because of manifest strategic reasons. It is a halting step in the direction required for mature, international social order. I recognize this article as a step toward the goal of a permanent international penal tribunal, administering a code of law. I admit that the crime of genocide cannot be satisfactorily enforced by national courts, as provided in article VI, because this crime will almost always be committed with the express or implicit approval of the state, but under these circumstances no state may be expected to punish persons who commit genocide.

ARTICLE VII

According to article VII:

> Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

There is nothing repugnant in this article to American or international law. By a political crime I presume is meant an act which is branded criminal by a sovereign political authority, but which actually may not be so because of the objective noncriminality of the act. But there is no question about the objective criminality of the act of genocide. It is criminal whether it is made such by human positive law or not. It is an intrinsically evil act, and hence the measure of its criminality is such that political asylum should not be accorded those who are reasonably accused of the commission of genocide. It follows inevitably that contracting parties should pledge themselves to grant extradition of genocidal criminals in accordance with the laws and treaties in force.

ARTICLES VIII AND IX

Articles VIII and IX refer to the administrative and judicial machinery available for the trial and punishment, on the international level, of persons accused of genocide. I approve these articles on the basis that they refer to the best possible means of enforcement, in the international sphere, thus far available. The inadequacies of enforcement contemplated by the convention are not such as to warrant its defeat. The convention has gone as far as the existence of rudimentary juridicial institutions of world society will permit.

If one believes that international law springs from a higher law constituting the cohesive force which holds international society together, he will reject an analytical view of law which interposes legalistic objections. But if a person believes that international law is merely the product of contractual action by nations which are juridically free to come to any decision they please on any matter, then he may vote against this covenant. Those who believe that law rests only upon physical power will probably not favor this convention because such persons have no faith in the efficacy of international law, except as it may be the will pro tem of sovereign nations. But it would be illogical for one sovereign nation to question the acts and policies of another sovereign nation, in a manner contemplated by this convention.

The implicit premises contained within this convention concerning the basis of the international penal order and the right and duty of States to sustain that order by putting behind it the full might of politically organized national society are sound, according to reason as well as the experience of history. Insofar as this convention marks a memorable advance on the difficult road toward the goal of a truly civilized society of nations, with appropriate means to protect and promote the most sacred values of humanity, I submit that it merits the unanimous endorsement of this subcommittee and of the Senate of the United States.

Senator McMAHON. Doctor, I want to thank you for that erudite commentary on this treaty. I am very much indebted to you for it.

ABILITY TO ENFORCE A CONVENTION IS NOT A TEST OF ITS VALIDITY

What do you say about this objection that has been made about the impossibility, under this convention, of reaching those who are now practicing genocide. Yesterday I think you were there: I think I saw you in the back of the room. You heard Mr. Finch testify, and Mr. Schweppe, who is here this morning, and Mr. Rix, and also the man from Louisiana, Judge Perez. What is your reply to that?

Dr. BROWN. My reply to that is that it is our juridical duty to put the moral and legal weight of the United States back of an already existing international criminal law which makes genocide a crime, and I distinguish between the validation of this principle in a way contemplated by this convention and the administration of the law or its effective administration. Just because a criminal law may not be effectively administered is no reason why the law should not be accepted as a law and supported as such. Those who would make enforcement the test of law, of course, belong to a school of jurisprudence with which I disagree. Just because a law is not enforced in a

way in which it should be does not mean that the act is less criminal, and we must not, of course, expect too much of this convention. It will not be a panacea for world peace. It will not prevent the acts which are going on behind the iron curtain. It would be, of course, a very effective thing to have in case there is another world war and we should endeavor to punish persons who may be reasonably accused of genocide. We would then not have any ex post facto objections such as were raised by the opponents of the Nuremberg and Tokyo trials.

ACTION IS LIMITED

And so, even though the advantages of our action in approving this convention are limited, much more limited maybe than the public perceives, I believe that there is sufficient justification to warrant the endorsement of the convention, because if genocide is already part of the international common law of crimes, and I believe it is, it is a juridical duty for this Nation to say so by formal legal action, by making it part of our positive law, by putting it, therefore, into our legal order, and it would be a very regrettable sight for this Nation not to do that. It would strike down everything that we tried to do at Nuremberg and Tokyo. It would strike down everything that we are trying to do with the United Nations, and those people who point to Russia as a nation which will interfere with the effective administration of this law may also point to Russia as the reason why we should not have a United Nations. All the objections, therefore, of the noncooperation of Russia which are alleged here in reference to this convention may also be alleged with reference to the United Nations, and therefore we must not be deterred from ratifying this simply because we may not be able to enforce it as we think it should be at this time.

INSERTIONS IN THE RECORD

Senator McMAHON. Doctor, thank you very much indeed.

I would like to insert in the record at this point a letter from the National Peace Conference, signed by Jane Evans, together with a statement, a proponent of ratification.

I also have a letter from the American Civil Liberties Union, signed by John Haynes Holmes, chairman, and Arthur Garfield Hays, general counsel, and Roger N. Baldwin, chairman of international affairs, in which they go on record as being for ratification.

I also have a letter from Norman Thomas, of the Post War World Council, of which Mr. Thomas is chairman.

Also a letter from the Polish American Congress, Inc., signed by Charles Rozmarek, president of the congress, in which the Katyn Forest massacre is referred to. This organization alsi is in favor of ratification.

We also have a letter from the Business and Professional Women's Club of Meadville, Pa.

We have a letter from the Catholic Association for International Peace, acting through the Most Reverend John J. Wright and Thomas H. Mahony, cochairman, juridical institutions subcommittee of the Catholic Association for International Peace.

We also have a statement of the American Association of Social Workers for insertion into the record. It is a statement that was

prepared for delivery before the subcommittee by the dean of social service, the Catholic University, but unfortunately he had to be out of town. We will therefore have his statement printed in the record.

We also have here for the record a statement by Rabbi Ely E. Pilchik, of Temple B'nai Jeshurun, Newark, N. J., a proponent.

Finally, a statement submitted by the United Latvian Committee, by Harry W. Lielnors, president.

All of these communications and statements will be included in the record.

(The matter referred to will be found on pp. 539–543.)

Senator McMAHON. Is Mrs. Ruth Gage-Colby here? All right, Mrs. Colby, of the Women's International League for Peace and Freedom.

STATEMENT OF MRS. RUTH GAGE-COLBY, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

Mrs. GAGE-COLBY. Mr. Chairman, I am sorry the other members of the subcommittee are not here. My name is Ruth Gage-Colby, and I am here on behalf of the Women's International League for Peace and Freedom, to speak in favor of the ratification of the convention against genocide, which has the entire title of a Convention for the Prevention and Punishment of the Crime of Genocide, which I think our members all wish the United States might have had the honor of being the first to ratify.

In past years the Women's International League has appeared at many hearings for measures which we believed would help to secure the peace and extend freedom, but I think never in our history, since 1915, have we ever more completely identified ourselves with a cause than we have with the outlawing of genocide. This is because we feel that there has never been a greater need of a law than there is for this convention.

These are some of the reasons for our stand: In the first place, the Women's International League numbers among its members many victims of genocide. We had members in France, Belgium, in Finland and Poland and Czechoslovakia, in Austria and Hungary and Germany, who not only professed a belief in peace but literally gave their lives for it. These women openly opposing the violent and ruthless practices of fascism and became its first victims. We had women in Norway and in Denmark who suffered greatly, although I think we have no records of deaths in Norway and Denmark. But we are, however, very able to understand why the Norwegian delegates at the United Nations came forward with a suggestion that "in part" be added to the intention to destroy the whole group.

In other countries other members have been more fortunate in their being allowed to continue to work for peace, and in this country Jane Addams, of Hull House, Chicago, and Emily Greene Balch, of Wellesly, have both been awarded the Nobel Peace Prize for their work in extending international understanding.

GENOCIDE A DENIAL OF IDEALS

Actually, to the Women's International League the crime of genocide is a complete denial of the ideals for which we stand. I think many organizations share with us this conviction. We have seen its barbarism as a prelude to war; we saw it at its worst during the war, and of course we saw it destroy freedom.

GENOCIDE UNCHECKED FOR CENTURIES

The second point is in relation to our attitude to the attempts being made to outlaw genocide. We wonder why this crime has gone unchecked and unpunished during the centuries, until the meeting of the First Assembly of the United Nations in 1946, when it was described and a draft treaty to outlaw it called for.

TERM "GENOCIDE" WAS COINED BY PROFESSOR LEMKIN

Of course, slightly before this time the crime had been given the name of "genocide" by Prof. Raphael Lemkin, formerly of Poland, a well-known international lawyer who himself was a survivor of the attempt to liquidate the Polish people.

Then, at Paris in 1948, the Third Assembly of the United Nations unanimously adopted the draft treaty that had been prepared, and it was the only unanimous action of that Assembly. No person at Paris, in my estimation, was more responsible for the completion of the convention than John Maktos of our State Department.

CONVENTION EVOLVED BY 58 NATIONS IN FIVE LANGUAGES

I watched the work of the Sixth Committee day by day for 3 months, and if the language of this treaty does not always ring true to Anglo-Saxon legal ears, it must be remembered that this treaty was evolved from the amendments of 58 nations in five official languages: French, Spanish, Russian, Chinese, and English, and comment upon all these amendments in about 30 languages and dialects.

CHILDREN COVERED

It was Mr. Maktos who was responsible for bringing in one of the most significant clauses into the convention, that which makes one of the acts of genocide "the forced transference of children to another group."

Suffering cannot be encompassed in language of the law, but in this convention the language is clear and it has been judged sound, comprehensive and effective by some of the outstanding legal authorities of our country and many other countries. Therefore we regard its ratification as an obligation and an opportunity to put into operation not only an effective legal instrument but a great moral force to uphold the principles of freedom and justice under law. As the Solicitor General put it so well, "the amalgamation of condemnation might be as strong as an amalgamation of arms." We hope so. We hope that this convention might actually have the power to deter this crime, and certainly by its application to constitutionally recog-

nized rulers, Government officials, and other individuals which are specifically named in the convention it is going to have some deterring effect. Just the fact that charges of this terrible nature can be preferred against responsible people, is going to have considerable weight. And we believe that to charge such crimes as wanton killing, physical and mental torture, prevention of birth and stealing of children, all of which were intended to destroy a group, may have very significant influence on international behavior.

It is not only because this is going to uphold the United Nations that we support this convention but because it extends the principles under which we have lived and flourished from the beginning of our history.

OUR OBLIGATION IS TO ERADICATE FEAR

In the Declaration of Independence the founders gave first place to the right to live, the right to life. There are not many rights named, just life, liberty, and the pursuit of happiness, because our founders knew that only those who feel that life is safe can enjoy life.

Thus our third reason for wanting this convention is that those of us who have enjoyed living under the principle that all men are created equal and therefore have a right to enjoy these inalienable rights, in a country where people have come from all over the world and have been made welcome here, have a special obligation to guarantee to people all over the world this freedom from the fear of the loss of their lives or, what is even worse, the fear of seeing the people they love killed before their very eyes.

We, as a nation, have a solemn obligation to eradicate the causes of mortal fear in our days, and there is mortal fear everywhere.

Senator McMahon. Why?

Mrs. Gage-Colby. People are afraid of their lives because they belong to certain groups whom they have seen persecuted as groups. They identify themselves with these groups.

Senator McMahon. Is that the basic reason for the fear in the world?

Mrs. Gage-Colby. Yes: that and the fear of another war. And because we have seen genocide as a prelude to war, we think that this crime must be governed and controlled first.

Senator McMahon. Why do people fear another war?

Mrs. Gage-Colby. They fear another war because conditions have not greatly improved in the 4 years since the last war. People are still hungry, people are still homeless, people are not allowed freedom of movement. In many places they live under extreme rigors of life in camps under guard.

Senator McMahon. Where do people think that the forces are coming from that lead to war?

Mrs. Gage-Colby. Unfortunately they think that some of these forces are coming from the United States of America, and that is one of the reasons why I should like to see our country identify itself with something obviously and completely constructive in spirit.

Senator McMahon. Do you mean that you believe most Europeans believe that the forces leading to war are coming from and being generated in the United States?

Mrs. GAGE-COLBY. Not exclusively. They see the world divided between two antagonists. They see Russia and the United States as the symbols of a divided world, and they feel themselves to be in between us in our political quarrels, and they are afraid. There are frightened people everywhere and my contention is that in our day no man should be afraid of his life, and certainly least of all, sir, because he happened to be born within the boundaries of a certain country or within the faith of a certain creed, or with or without skin pigment. Having lived in countries where people were all brown and all yellow, I became conscious of a lack of skin pigment, and you see the reason why the authors of this convention were so very much concerned to get these groups, ethnical, national, racial, and religious, named, is because these things are birthrights of men. They are no man's fault, they are not of his choosing. They are his birthright, and by these things people are very recognizable and they are very vulnerable.

CHILDREN ARE PEOPLE

The fourth reason that we want to see this convention ratified is because it specifically includes children. And children are the most victimized and the most innocent of all the people wronged by genocide. Children are people, very important people, in every land.

RED EDUCATION OF KIDNAPED CHILDREN

When I speak for the children I speak not only for the Women's International League for Peace and Freedom, but also for the International Union for Child Welfare, for which I have made three voluntary trips around the world since the end of the war. I want to mention the children I have seen in the rehabilitation camps in Poland, children who are being helped to find their way back to normal life, children who suffer from great mental scars. I think if there were any lack of understanding of what "mental harm" means in the text that visits ought to be arranged to this kind of rehabilition camp. Some of these children have in their eyes such fear that one is forced to turn away. So close to the surface is the terror through which they have passed that the mere slamming of a door will sometimes send them into paroxysms of fear and fits of crying. I have also seen children in the camps for the Greek children in Moravia and in Yugoslavia where they are being well enough cared for, but from which they may not return home unless someone helps them to get there. The conditions set for their return by the United Nations a year ago are that the children must ask to be returned to their parents or the parents must send for them. In many cases for the parents to send for their children or to claim them would mean to seal their own doom. These children are being taught to hold in contempt, and possibly to kill, the people who gave them life.

Senator MCMAHON. Who is teaching them?

Mrs. GAGE-COLBY. The teachers in the camps, who are the paid teachers of the governments of those countries, who are, I suppose, controlled by Communist domination.

FEAR OF WAR IN EUROPE

Senator McMAHON. That is what makes me wonder, you see, as to why people should feel in Europe that war threatens them because of the United States of America.

Mrs. GAGE-COLBY. I do not say because of us alone. They always see us in juxtaposition to Russia.

Senator McMAHON. In other words, they see us as strong enough to prevent them from conquering the world; isn't that it?

Mr. GAGE-COLBY. I suppose they do, but I want to say at this time, that they live day by day with the word "war" rarely, if ever, crossing their lips. They say, as one of the women in the Polish Government said, "We behave as if war were impossible," and therefore the fears that one finds, however near the surface, are rarely expressed in terms of war. I suppose they hope that we are strong enough, but the thing that they hope for most, sir, is to be able to have enough bread and decent clothing and roofs over their heads again, and most of all an opportunity to rear their children in something like normal surroundings; and I must say that their judgment of governments is in terms of what those governments can provide. If the United States can help their governments to provide those things for them, they are going to be loyal to those governments and to us, but only then.

As I left Europe this fall, many Europeans, not government people, but Europeans in nongovernment circles, spoke critically of our divided program, so much of it going into armaments rather than into productive things like fertilizer and farm machinery.

They express fears of being kept down in semislavery, as so many of them are now, without a chance to go ahead and build a better and decent life.

CHILDREN IN THE ARAB WORLD

I want to speak also of children as I have seen them in the Arab world. There is a situation for which we are responsible, very deeply and definitely responsible, because without the influence of the United States the United Nations could not have partitioned Palestine. I am not here to speak now of the right or the wrong of this. It is done. But it created the homelessness of a million people in order to give another million people, who were homeless, homes.

The name of the village of Lidice is known as a symbol of Nazi sadism but there are Arab villages, especially the village of Bir Yassin, which match the story of Lidice in every terrible detail, with horror to spare. This is not recorded to blame the Jews but to make clear that such suffering as the Jews experienced may make saints of some men while it turns others into beasts. This is genocide's blackest indictment.

I saw the children of the Arabs in the great refugee camps. One-third of this population are children under 10. They are living in conditions that are certainly better than concentration camps, largely because the American Friends Service Committee and the Save-the-Children Fund and the Red Cross Societies are administering the money appropriated by the United Nations. But the conditions are still so bad that many aged people and children die——

Senator McMAHON. But we put in about $17,000,000 or so.

Mrs. GAGE-COLBY. That would mean $17 a person in the last year that the United States has spent. Of course, $17 a person isn't a great deal of money.

Senator MCMAHON. It is a lot there.

Mrs. GAGE-COLBY. And they are grateful for the help that is coming to them because it is absolutely the thing that keeps them from going down into despair; all this suffering for the only reason that they are Arab people.

Senator MCMAHON. You and I could talk with much interest of your trip around the world. I would love to hear it.

Mrs. GAGE-COLBY. This is what I want to say. These are crimes of genocide. These are things done because people were Greeks, because people were Arabs, because they were Jews. The things I saw in Pakistan, India, were because people were Hindu or because people were Moslem. We are living in an age of genocide. Genocide is on the march in our world, and the nations of the world are suffering under the impact of genocide that has been committed.

In conclusion, let me say that no nation is safe in our day from sadistic sadism as we have seen it practiced, and as it may be practiced. The measure of totalitarian governments may be taken by the various acts that they either cultivate or condone against groups within their countries, and I believe that this convention, even as it stands, has the power to check deteriorating conditions and to keep this world from sliding over into world-wide violence and global war.

The Women's International League regards the convention as a kind of moral airlift that could, if it is ratified, and especially if it is supported by an adequate international legal tribunal, bring about a complete reemphasis in our world, lifting people away from their preoccupation with destruction and the fear of death; enabling them, encouraging them, to turn to a new concern for life in freedom.

Thank you, Mr. Chairman.

Senator MCMAHON. Thank you very much, Mrs. Gage-Colby.

Is Mrs. Dorothy Madders Robinson here? Mrs. Robinson, Woman's Division of Christian Service of the Board of Missions and Church Extension of the Methodist Church?

Mrs. Robinson, I see you have a short statement.

Mrs. ROBINSON. I have a short statement. In that way I am peculiar.

Senator MCMAHON. You are, indeed!

STATEMENT OF MRS. DOROTHY MADDERS ROBINSON, MEMBER, WASHINGTON ADVISORY COMMITTEE OF THE CHRISTIAN SOCIAL RELATIONS DEPARTMENT OF THE WOMEN'S DIVISION OF CHRISTIAN SERVICE OF THE METHODIST CHURCH

Mrs. ROBINSON. My name is Dorothy Madders Robinson. I am a member of the Washington Advisory Committee of the Christian Social Relations Department of the Women's Division of Christian Service of the Methodist Church.

At its annual meeting in December 1945, and again in 1949, the women's division of the Methodist Church recommended and urged "congressional approval of the Convention on Genocide." We feel that it is important to proceed with this convention while the horrify-

ing acts of genocide are still fresh in the hearts and minds of men and that this is our opportunity to erase such deeds from the face of the earth. In our time we have seen this hideous evil take the form of mass physical destruction; mass mental destruction; the wholesale stealing of children; and the widespread dispersal of family groups. When one has once seen what such a process does to human beings, both to those upon whom such crimes are carried out and those through whom they are perpetrated, one can never again think of this ratification as an academic issue. It becomes literally the gift of the right to live for millions of human beings.

I should like to say, Mr. Chairman, that it has been my privilege to interview many people who have suffered, who have been victims, or attempted victims, of this crime of genocide. It is difficult even to speak calmly of things that one has seen and heard from people who have been spared by some miracle.

GENOCIDE A SHOCK TO CONSCIENCE OF CHURCH WOMEN

The denial of the right of existence to entire groups shocks the conscience of church women who believe in the Christian teaching of the interrelatedness of the human family and the infinite worth of every human being. Indeed, such a denial not only stabs our conscience but makes a mockery of the fundamental principles the church lives to proclaim. We look upon this convention as the legal form of expressing our deeply felt solidarity with and responsibility for the lives of our brothers in other nations, races, and religious groups.

BECAUSE OF REMOTENESS THE CRIMES FAIL TO AROUSE US

Many people in the United States are not concerned with such crimes because they occur in far-away countries. They fail to recognize the national and international dilemma created by such acts wherever they occur and fail also to understand that the peace of the world is threatened by them. Furthermore, while it is true that North America has recently been spared such acts of violence, every American school child knows the tragic story of the crime of genocide as it affected the Acadians of the Gaspe peninsula a little more than 200 years ago, and is still better acquainted with genocide as practiced so tragically on many tribes of American Indians.

CONVENTION IS NOT PERFECT

We support the United Nations Organization, but we do not support it because we consider it a perfect instrument. We support it because we consider it an instrument which represents the maximum amount of world cooperation now possible. We do not support this Convention on Genocide because we consider it a perfect instrument. We support it because we think it is probably the best we can get under the circumstances, and the most effective thing that can be produced under the circumstances.

We are pledged to support the United Nations, and we are pleased that one of the first international acts, legislative acts, of the Assembly is so thoroughly in harmony with the principles we stand for. We know that without the vigorous support of the United States dele-

gation to the United Nations the convention would not have so quickly passed the Assembly in 1948. The readiness with which the Senate acts now to ratify the measure becomes in the eyes of the world a major test of United States support of the United Nations. Prompt action here will inspire similar action from other nations.

REQUIRES INTERNATIONAL COOPERATION

The prevention and punishment of genocide we believe requires international cooperation. The United States has long been party to other international conventions such as those preventing white slavery, piracy, and opium traffic, but the crime of genocide is more basic than even those offenses, heinous as they are, for before any other right the human race must enjoy its God-given right to live.

Senator McMAHON. Thank you very much.

Is Mr. Frank B. Frederick, of Boston, Mass., general counsel of the American Unitarian Association, present?

Mr. Frederick, I am not going to impose any new rule on you that I have not imposed here before, but I would appreciate it if you can keep your statement within 10 minutes.

Mr. FREDERICK. I am sure I can.

Senator McMAHON. It is simply that I have so many witnesses, and I have to close these hearings today.

STATEMENT OF FRANK B. FREDERICK, GENERAL COUNSEL, THE AMERICAN UNITARIAN ASSOCIATION

Mr. FREDERICK. Very briefly, before I address myself to the principal reason why I am here, namely to record the opinion of the American Unitarian Association in this matter, but as an attorney may I say I do not see the difficulty with the words "in whole or in part" that some of my brethren of the bar have testified to, and for this very simple reason. The convention provides that there must be an intent to kill or wipe out or otherwise harm, as defined here, whole groups.

I think it can be assumed that in most genocide complaints the rule has been the killing of many, many people, and in any case where it were a small number, or even one, as has been suggested in these hearings, the courts—our courts—would insist that a strong proof was missing if only one or a small group had been killed. In other words, in the absence of that it would be the strongest kind of argument to make before the court that this was simply homicide and not genocide. But to say that it could not be genocide merely because one person was killed I think it not legally sound.

May I illustrate. If I, with others, had a definite plan, and had reduced it to writing, let us say, to kill all Hottentots, and as I left this room I discovered one Hottentot here and committed a murder of that person, and was apprehended, it would be ridiculous, I think, when this written plan which I had conceived and was ready to carry out was found in my bag, to say that I could not be convicted of genocide. In other words, it is a matter of proof of the intent, and in all criminal law proof of intent in some cases is very difficult and in other cases it is more obvious. That is the question of this "in whole or in part." In the absence of a large group there might be a strong

presumption that it was not genocide, but in each case the proof of the intent would be the important thing, and not the number of persons that had been killed.

RESOLUTION OF BOARD OF DIRECTORS OF THE UNITARIAN ASSOCIATION

The following resolution was passed by the board of directors of the American Unitarian Association at its meeting held on January 10, 1950:

Whereas the American Unitarian Association has consistently endorsed all practicable steps toward a more enduring peace, embodying such endorsement within recent years in a number of resolutions urging support of the United Nations and its subsidiary agencies as well as resolutions in support of human rights; and

Whereas a just world order must be founded upon protection of the human rights of both individuals and groups; and

Whereas it has been demonstrated time and again that the moral judgment of mankind is a relevant and vital factor in determining the policies and actions of government: Therefore be it

Resolved, That the board of directors of the American Unitarian Association, meeting in Boston on January 10, 1950, urges ratification by the United States Senate of the Genocide Convention as drafted by the United Nations Human Rights Commission, adopted unanimously by the General Assembly of the United Nations in Paris on December 9, 1948, and as recommended for ratification by President Truman and by the General Assembly of the United Nations.

It is in order I believe for this subcommittee, and through it for the whole body of the United States Senate, to be reminded of the moral power and effective force which is available through the churches in every part of our country. The churches as a whole support the ratification of the Genocide Treaty. This has been made abundantly clear from the evidence submitted to this subcommittee by the United States Committee for a United Nations Genocide Convention.

SUPPORT OF THIS CONVENTION NO WASTE OF CHURCH POWER

I would never advocate that religious groups embrace every idea and ideal that has a foundation in high moral purpose and idealism. It is possible to waste the power of the church upon measures which are impractical and only remote visions. The Genocide Treaty is not impractical nor is it visionary. It must never be forgotten that only men and women who through their religion believe in the force of moral conviction and believe in including statements of idealism and humanitarian truths in constitutions, charters and treaties—only these men and women—are capable of advancing civilization in its determination to achieve a just world and a lasting peace.

The first right to the writ of habeas corpus, the first right to religious freedom, the bill of rights in our own Constitution, and now this first step toward an international bill of rights, started with and forever shall continue to be statements of fundamental right and truth and basic decency to which all religious persons have always subscribed and given effective support. The power of the churches to initiate and sustain advancing truth when it is embodied in laws such as the Genocide Treaty is second to none. That power exists and is available and will support the United States Senate in a ratification of the Genocide Treaty.

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WITNESSES REPRESENT 100,000,000 PEOPLE

I represent one great denomination and am empowered to promise for it the support of this treaty. One hundred million people or more, represented by the witnesses who have testified before this committee, will also support the treaty.

I am aware of the objections of the American Bar Association. I am a member of that association but I do not agree with its committee's conclusions nor with the vote of its delegates to oppose the ratification of the Genocide Treaty.

I join with those who have said that in carrying out the treaty if there be risks they are calculable and who have said "Let us take those risks." I am glad that the American Bar Association has pointed out the risks. It was the duty of some group of lawyers to do so. Equally, it is the duty of all of us now to appraise those risks and see them in a world perspective, match them against the penalties if we refuse the treaty and come to a great decision.

In my opinion, there is no risk when we consider the treaty primarily in its international aspect. Genocide is carefully defined so that it is distinguished from homicide and it is unthinkable that as a Nation the United States of America will ever be a defendant in a genocide complaint.

IN NATIONAL ASPECT GENOCIDE MAY BE CONFUSED WITH HOMICIDE

In its national aspect the greatest risk as I understand it lies in the possibility that genocide complaints against individuals will be confused with homicide and that in such complaints our citizens will have something less than their present constitutional rights and protections.

But the treaty provides for its implementation in this country under laws to be made by Congress. It is doubtless true that because it will be dealing with a treaty, Congress in passing implementing law could ignore the Constitution because treaties themselves are on a par with the Constitution.

I say to this argument and with all respect to the American Bar Association's point of view, "What of it?"

Even if it is possible, it is unthinkable that any Congress would ignore constitutional principles and protections affecting our own basic human rights. This problem of Congress legislating to implement a treaty is not a new one. No Congress has yet sold us down the river because of its special law-making powers when treaties are involved. I am willing, and I believe the American people are willing, to trust Congress not to defeat the basic constitutional rights of its own citizens while it is in the very act of making similar rights available to the rest of the world.

We of the American Unitarian Association are not afraid of the national or international risks inherent in the adoption of the Genocide Treaty.

We believe in the power of our churches and other churches to support the treaty effectively and make the treaty a practical working force when it has been ratified.

Once again, the world looks to our great nation for leadership. We must stand for human rights in all the world as we have always stood for human rights in our own country.

Senator McMAHON. Thank you very much.

Now we have the Reverend Athenagoras Kokkinakis, of New York, representing the Greek Orthodox Archdiocese.

STATEMENT OF THE REVEREND ATHENAGORAS KOKKINAKIS ON BEHALF OF HIS EMINENCE ARCHBISHOP MICHAEL OF THE GREEK ORTHODOX CHURCH OF NORTH AND SOUTH AMERICA

The REVEREND KOKKINAKIS. Mr. Chairman and members of the committee, I am here to testify on behalf of His Eminence Archbishop Michael of the Greek Orthodox Church of North and South America.

We are proud that this, our country, is Christian. We cherish liberty and justice, fruits fully grown in the field of Christianity.

It is known that Christianity considers human personality as the most sacred and unshakable value in the visible world. When we prove ourselves ready to do our utmost in order to save lives we show how much we respect the immense value embodied in human beings.

You may remember how much this Nation was moved when a little girl had fallen in an old well in California. Everybody listened eagerly to the radio description of the work for the rescue of that unfortunate little girl.

SOME SIGNATORIES OF CONVENTION ARE NOW PRACTICING GENOCIDE

Today millions of human being have been forced into the dark depths of inhuman conditions behind the iron curtain. Many countries have signed the agreement of the Convention on the Prevention and Punishment of the Crime of Genocide. These agreements later on were adopted by the General Assembly of the United Nations, December 9, 1948.

It is a very sad fact that some of these countries which have signed this constitution of the Convention on Genocide are proving themselves today as practicing the very opposite of what they have agreed to condemn.

ABDUCTION OF 28,000 GREEK CHILDREN

The abduction of 28,000 Greek children is a sad, self-speaking example. This is the most recent proof that genocide is still practiced, though condemned as inhuman and immoral as a crime under international law and contrary to the spirit and aims of the United Nations.

We feel that the American people must know these contradictions. American citizens will express their abhorence when informed that countries which have promised respect to the decisions of the United Nations are doing just the opposite. By their actions they definitely and effectively undermine the international organization, which we consider to be the hope of the world.

Just recently, at the last General Assembly of the United Nations, a resolution was passed that all Greek children abducted by Communists should be returned to their parents. But the Greek nation still mourns these children. Their mothers are still waiting in agony and prayer for their return.

DISTRIBUTION OF THE GREEK CHILDREN

According to the information given to the press by His Eminence, Archbishop Michael, 2,000 of these children are still in Albania, 2,650 are still in Bulgaria, 3,000 are still in Hungary, 3,800 are still in Rumania, 2,235 are still in Czechoslovakia, 11,000 are still in Yugoslavia. We do not know how many have been moved to Poland and Eastern Germany.

Senator McMAHON. And the country that is keeping them, because, of course, Russia dominates all of these countries, has signed the convention.

The Reverend KOKKINAKIS. Yes. That is a contradiction.

American opinion must be expressed in condemnation of this crime against humanity which is defined as genocide.

America today is leading the world in humanitarian work. The American people, being the most active in this respect, should raise a protesting voice against this recent example of genocide, demanding the return of the Greek children to their homes.

We think that it is the duty of the American people, the duty of the American leaders, to call for respect for the most sacred value of our world, the human being.

A PLEA FOR AID TO THE GREEK CHILDREN

Mr. Chairman, I ask the honorable members of this committee, on behalf of my spiritual superior, Archbishop Michael, to use your good offices for the salvation of the Greek children, giving happiness again to the Greek mothers, telling the world that America, following her glorious traditions, condemns this inhuman, un-Christian, and immoral act of abducting children, as a crime against civilization and against the aims of the United Nations.

Senator McMAHON. Thank you.

Of course, we would not have to adopt this convention or treaty in order to express our sense of outrage at what has been done here in the case of these Greek children.

Thank you very much.

Mr. Bernard Weitzer, national legislative representative of the Jewish War Veterans of the United States of America.

STATEMENT OF BERNARD WEITZER, NATIONAL LEGISLATIVE REPRESENTATIVE, JEWISH WAR VETERANS OF THE UNITED STATES OF AMERICA

Mr. WEITZER. On behalf of the Jewish War Veterans of the United States of America, I am happy to express our appreciation to your committee for the opportunity of presenting to you our views in support of ratification of the Genocide Convention.

RESOLUTION OF EXECUTIVE COMMITTEE

This support is in accordance with a resolution, unanimously passed by our national executive committee at its meeting in Atlantic City, N. J., November 26, 27, 1949. The resolution reads as follows:

Whereas the United States of America provided vigorous leadership in the United Nations to bring about adoption of a Genocide Convention, a notable step forward in the development of an international society based on the dignity of man and individual rights and liberties; and

Whereas we believe it essential to the maintenance of American leadership in world affairs for our country to show the way toward final approval of an international action that would provide hope of ending the destruction of racial, religious, ethnical, or national groups: Now, therefore, be it

Resolved, That the Jewish War Veterans of the United States of America, representing more than 100,000 organized American veterans of Jewish faith, hereby expresses its wholehearted support of the United Nations convention against genocide now being considered for ratification by the nations of the world: And be it further

Resolved, That we urge approval of ratification by the United States Senate at the earliest possible moment;

That we urge each member of the Jewish War Veterans of the United States of America to write to the Honorable Brien McMahon, chairman of the Genocide Subcommittee of the Foreign Relations Committee, urging such ratification;

That we urge each member of the Jewish War Veterans of the United States of America to write to Senators of his own State asking their support of the Genocide Convention;

And that we urge our fellow citizens, veteran and nonveteran, to add the weight of their consciences to similar action.

AMERICAN IDEALS IN HARMONY WITH CONVENTION

The spirit and ideals of America are clearly in harmony with the Genocide Convention. The ratification of the convention in our Senate will be a further affirmation of our spirit and our ideals, to which the crime of genocide is utterly repugnant. It is high time that genocide should, by international agreement, be labeled the infamous crime it is and effective provisions be made for its prevention and punishment.

We believe it is particularly fitting that the Jewish War Veterans of the United States of America, organized by men of our faith who fought in our War Between the States and whose members have since fought in all of our country's wars, should support and urge upon you ratification of the Genocide Convention. During the 54 years since the Jewish War Veterans of the United States were organized, it is almost too easy to recall the illustrations of genocide as practiced in the slaughters of Armenians by the Turks, the pogroms against the Jews under the Russian Czar; the horrors of the concentration camps, death chambers, and the firing squads of Nazis which resulted in the deaths of 6½ million Jews and 2½ million Poles, for these horrors brought shudders to us and to our parents in what we like to think of as a civilized era. They have dimmed similar horrors which have stained the history of mankind back through the centuries. Genocide is a crime with a most unsavory record.

WHAT WE DO BY RATIFICATION

Now through ratification of the Genocide Convention as passed by the United Nations, we have the means to register our national abhorrence and to provide the deterrent to the practice of genocide. Our representatives at the United Nations are men and women who are steeped in the American tradition which dignifies the individual as possessing certain inalienable rights of which he may not be deprived by the State. We believe that our Senators are likewise steeped in the same tradition and that in voting to carry out that tradition they will vote for the ratification of the Genocide Convention, which stigmatizes as criminal those States or the tyrants or oligarchs who may seize power in States, practicing or permitting the practice of genocide, the supreme deprivation.

Several of the smaller nations have already ratified the convention. Many, many more are prepared to proceed with ratification following the lead of our own great Nation. Delay on our part would be a blow to the prestige which we have earned by our efforts in the organization of the United Nations and our continued support of that organization and by our material sacrifices for the reconstruction of the war-torn economies of the nations which participated in World War II and our aid to the well-being of the individual sufferers, the homeless, the orphaned, and the widowed. To all of these, many of whom witnessed and survived genocide, the vote of our Senate for ratification will bring hope and a realization that better days are ahead for mankind.

We respectfully request that you include in the record, as part of our statement, the article by Leo Sontag, national deputy judge advocate of the Jewish War Veterans of the United States of America, beginning on page 82 of the Massachusetts Law Society Journal for December 1949, entitled "International Human Rights," which deals with the legal aspects of the ratification of the genocide convention.

Senator McMAHON. Have you it with you?

Mr. WEITZER. Yes, sir.

Senator McMAHON. Submit it to the reporter, Mr. Weitzer, and we will print it in the record.

(The matter referred to is as follows:)

AN ANSWER TO "INTERNATIONAL PROPOSALS AFFECTING HUMAN RIGHTS," BY FRANK E. HOLMAN, PRESIDENT OF THE AMERICAN BAR ASSOCIATION

(By Leo Sontag[1])

The documents in the international field of human rights—The Universal Declaration of Human Rights, the Proposed International Covenant on Human Rights, and the Genocide Convention—are of vital interest not only to Americans but to people everywhere in the world. Although the Declaration of Human Rights and the Genocide Convention have already been approved by the General Assembly of the United Nations, it is nevertheless in the greatest public interest that these documents, along with the Draft Covenant, be given over to debate and argument in all the available forums of public opinion.

The issues involved appear to be acutely controversial. Lawyers who believe themselves sincerely concerned for human rights and the American constitutional system have differed vigorously as to the idea of a covenant, its contents and phrasing, and its proposed implementation. A consensus has hardly emerged among lawyers or in public opinion.

Because of this and due to the prevailing general ignorance as to what is going on in regard to these matters, it is the writer's intention to answer, to some extent, the speech of Mr. Holman in order to lay before the readers of the Law Society Journal a more complete and rounded picture of some of the basic facts involved. A common understanding of such basic facts is a prerequisite to an intelligent discussion of the efforts and achievements of the Human Rights Commission of the United Nations. It is extremely important that members of the bar shall not take a wholly negative attitude on such great issues for. traditionally and in modern times, lawyers have been among the foremost and greatest champions of human rights.

The writer leaves it to the reader to satisfy himself as to the desirability. utility, and ultimate effectiveness of such a program of human rights.

At the outset, it may be advisable to answer a question of interest to many: that is, the reason for two documents, the declaration and the covenant, instead of a single one. The Human Rights Commission of the United Nations was, in

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[1] B. S. in B. A., LL. B., Boston University; LL. M., Harvard Law School, member of the Boston bar; associate, Holtz & Rose.

The writer is indebted to the Harvard Law School Library for the use of a paper entitled "International Covenant of Human Rights," by J. Shestack. Mr. Holman's address will be found on p. 149.

the beginning, faced with the problem of drafting an "international bill of human rights." Such a bill could have consisted of a statement of general principles, such as the American Declaration of Independence or the French Declaration of the Rights and Duties of Man. On the other hand, it could have taken the form of a document having legally binding force—an international equivalent of the United States Bill of Rights. The Human Rights Commission decided in its second session at Geneva that both a statement of principles and a treaty were necessary. Accordingly, we have a Universal Declaration of Human Rights, which has no legal force or effect, already approved by the General Assembly; and a Draft Covenant still being redrafted and improved, which is intended to be a legally binding treaty on those nations which become parties to it by ratification.

Mr. Holman points out that the American concept of a bill of rights is that it is a "Bill of Prohibitions" against the encroachment of government, in that Congress is prohibited from making laws which impair these rights. He claims that this basic concept is being ignored and that the whole international bill of rights program is "predicated on the un-American theory that basic rights can be created and defined by legislative fiat." As has been pointed out elsewhere, the principal reason for employing the technique of stating the American Bill of Rights as a bill of prohibitions could be found in the fact that at the time of the enactment of the Bill of Rights, the rights it sought to protect were generally considered to exist at common law, and hence the formulation of the protective clauses in terms of a prohibition against violation of these rights appeared to be a normal, logical procedure. On the other hand, there is no such thing as recognized human rights in international common law. This necessarily accounts for the difference in concept. The notion of affording international protection of certain human rights and freedoms by treaty provisions is not foreign to international law. To call such an idea an "un-American theory" is unjustified in view of the particular background of our own Bill of Rights.

Mr. Holman is incensed by the notion that the United Nations Assembly through a declaration of human rights, or through ratification of a treaty by the United States Senate, can be the source of individual rights. His reasoning follows that the same legislative fiat which confers these rights may withdraw them or condition them. To the reader, this may create the impression that those rights and liberties which we, as Americans, now enjoy, may be conditioned or limited through participation in the international human rights program. This is not so for two good reasons. First, the rights we enjoy under the American Constitution cannot be limited, abridged, or conditioned by treaty. Such is our constitutional form of government. A treaty may add to the rights guaranteed by the Constitution but it cannot take away. Secondly, a proposed additional article to the Draft Covenant on Human Rights states that the righs and freedoms set forth in the covenant are in addition to and not in derogation of such rights and freedoms as may be guaranteed to all under the laws of any country which is a party to the covenant. This proposed article will most likely become a part of the covenant although it is not necessary for our protection in view of the supremacy of the Constitution over treaties enacted pursuant to it. Therefore, it can be seen that under the "Un-American theory" (as Mr. Holman calls it) of the declaration, we, as Americans, have nothing to lose and everything to gain in the field of human rights.

Granting Mr. Holman's contention that the declaration is not as well drawn as our own Bill of Rights, there is nothing unusual or startling in such a comparison of draftsmanship. It must be kept in mind that the declaration represents a compromise in the efforts of 58 nations and many more languages. By comparison, our Bill of Rights was a simple affair and yet it took many years to formulate. Even with the fine draftsmanship employed in our Bill of Rights, there have been countless difficulties in interpretation. Anyone who doubts this need only have recourse to the 335 volumes of the Supreme Court reports. Mr. Holman, it seems, would like all the world to accept "due process" as interpreted in these three hundred and thirty-five-odd volumes. A noble thought, and understandable from the American point of view, but would it be acceptable to the other 57 members of the United Nations?

Mr. Holman states:

"For example, as to basic rights, article 3 of the declaration states that everyone has the right to life, liberty, and security in person, but this article does not recognize as coequal with these rights the right to own property and no one is to be arbitrarily deprived of his property, but there is no adequate provision that private property is not to be taken for public use without just compensation and without due process of law, as in our own Constitution and Bill of Rights."

The above paragraph seems to point out a vital omission in the declaration. Yet, article 17 of the declaration states:

"1. Everyone has the right to own property alone as well as in association with others.

"2. No one shall be arbitrarily deprived of his property."

That the right to own property was not included in the same article with the right to life, liberty, and security of person was a problem in draftsmanship. Certainly the mere fact that these rights appear in two different articles of the declaration should not justify the statement that such rights are not recognized as coequal. That the declaration does not expressly refer to such concepts as "eminent domain" or "due process" may be regrettable from an American juridical viewpoint, but two notions should be kept in mind. Because there are 17 nations and 11 languages represented on the Human Rights Commission, the language of the declaration necessarily had to represent a compromise. Differences in language present a real barrier. A familiar phrase such as "due process" cannot be properly translated into some of the languages represented, or if translated, would be meaningless.

Similarly, Mr. Holman finds fault with the generality of the provisions of article 11, which provides that everyone charged with a penal offense shall have "all the guarantees necessary for his defense." Notwithstanding the fact that the declaration, like the American Declaration of Independence, was intended to state only broad principles, he seeks inclusion of provisions for a writ of habeas corpus and trial by jury. Such specific rights are to be taken up in the covenant and not in the declaration.

Article 13 provides that "everyone has the right to freedom of movement and residence within the borders of each state." Although Mr. Holman declares that "no one can possibly know what this loose language may mean," it refers to a right which each American enjoys, that of moving to or living in any part of the United States free from governmental restriction. This article was aimed at countries such as the Soviet Union where such rights are unknown and are exercisable only under pain of governmental sanction.

Article 14 provides that "everyone has the right to seek and enjoy in other countries asylum from persecution." Mr. Holman, in effect, says that this article would nullify our immigration laws. However, this article refers to persecution for political crimes only, as it expressly states that this article is not to be invoked "in the case of prosecutions genuinely arising from non-political crimes." In addition, nations such as the United States and England have already long been havens for political refugees. Again, it is to be remembered that this article, like the others, represents an ultimate standard of achievement and does not confer an enforceable right.

Similarly with regard to articles 16, 18, and 19 of the declaration, which Mr. Holman sees as setting aside our local and national laws. Such is neither the intent nor the purpose of the declaration which can best be expressed by setting forth the following statement by Abraham Lincoln. Referring to the assertion of human equality in the Declaration of Independence, he said:

"They (the drafters) did not mean to assert the obvious untruth that all were then actually enjoying that equality or yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit.

"They meant to set up a standard maxim for free society which should be familiar to all—constantly looked to, constantly labored for, and even, though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people, of all colors, everywhere."

Mr. Holman decries the complaint made by the International Association of Democratic Lawyers as illustrative of the "Pandora's box of complaints" which will arise. The complaint of the Association of Democratic Lawyers, among other things, charged that the New York Communist trials were in violation of the universal declaration of human rights. Without going into its merits, there is nothing extraordinary about such a complaint. It should furnish no cause for excitement. We have always recognized the right of a minority, however small and however misguided, to speak. We may not agree with them, and in fact we may disagree with them, but we still recognize their right to protest. As under the first amendment to the Constitution, the mere fact that fools and crackpots have abused and misapplied such rights as the right of free speech and freedom of the press does not detract from the basic soundness of

the rights. It is to be noted that although a complaint was made by the Association of Democratic Lawyers, no one paid any attention to it. The Communist trials still continue.

Mr. Holman says:

"Articles 18 and 19 are so loosely phrased as to 'freedom of thought and opinion and expression' that Communists and other subversives are free to impart their doctrines and undermine our institutions without the right on the part of our Government to prosecute them."

Article 18 of the declaration reads as follows:

"Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance."

Article 19 states:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."

Although the language is more detailed than in the American Bill of Rights, the writer fails to see any rights enumerated which the American people do not enjoy under our own Bill of Rights or by its judicial interpretation. As such, articles 18 and 19 give Communists no more protection than they already enjoy under the Constitution. It cannot be denied even today that the Constitution guarantees "freedom of thought, opinion, and expression" to Communists. The New York trials must not be confused in their effect. There the defendants are on trial not simply because they are Communists, nor because they are the avowed leaders of the Communist Party, but because they stand accused of conspiring to overthrow the Government by force and violence.

Mr. Holman says that the Soviet Union can place the complaint of the International Association of Democratic Lawyers on the agenda of the General Assembly for action. It is assumed that he meant propose the complaint for the agenda, for no member of the United Nations can of its own volition place an item on the agenda of the Assembly. As for proposals, a member of the Assembly can, as a practical matter, propose almost any item, so that Mr. Holman's fear in this respect is unwarranted.

Articles 22 through 28 of the declaration, in the view of Mr. Holman, constitute an agreement to "commit the member nations of the world to a paternalistic form of government." These articles encompass the so-called economic and social rights as compared with the first 20 articles which deal with civil rights. These are a new type of rights in the sense that people are familiar with civil rights but not with economic and social rights.

The economic and social rights include social security, the right to work, free choice of employment, just and favorable conditions of work, equal pay for equal work, the right to form and join trade unions, and the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay. Further, there is included the right to an adequate standard of living, the right to unemployment security, and the right to education. These articles embody recognition of a trend in the direction of these rights among the foremost, modern nations of the world and, in effect, propose that such a trend should be followed as far as practicable. They commit no one but represent a common standard of achievement for all peoples and all nations and impose a moral obligation to secure observance and recognition of these rights. There are no guarantees in the declaration as to how these rights shall be obtained. The proposal of the Soviet representative that it was to be the obligation and responsibility of member nations to secure these rights for individuals was overwhelmingly defeated in the Human Rights Commission. These articles do not "tend to impose so-called economic and social duties on government." Many of the enumerated rights are secured in the United States not by governmental action but through collective bargaining agreements between labor and management. Nor will such rights require "a complete control by government of individual action" as Mr. Holman asserts.

Mr. Holman is especially opposed to article 26. He interprets it as providing that "education shall be an instrumentality for propagandizing the citizens of the world to the promotion of a collectivist society as set forth in the declaration." In the writer's opinion, the complete text of article 26 refutes such an interpretation. It reads:

"1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible on the basis of merit.

"2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

"Parents have a prior right to choose the kind of education that shall be given to their children."

Mr. Holman sees article 22 as providing, in large measure, that the United States may be called upon to provide social security for the rest of the world. Article 22 states:

"Everyone as a member of society, has a right to social security and is entitled to the realization, through national effort and international cooperation and in accordance with the organization and resources of each state, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality."

The advisability of including the term "social security' 'in this article was debated at length because it had different meanings in different countries. After the final decision had been made to omit the term, the minority view that it should have been included was so strongly expressed that inclusion became inevitable. However, as a compromise, an intentionally loosely drawn phrase was inserted which would recognize the necessary differences in the various countries in the manner and extent of securing this right. This phrase was "in accordance with the organization and resources of each state." In the history of this article, there is neither a suggestion nor implication, express or implied, to support Mr. Holman's view.

It is true that the declaration contains no provision for amendment. But, since the declaration is not enforceable and contains no legally protected rights, a provision for amendment is no more necessary than one would have been in the American Declaration of Independence.

In regard to the Draft Covenant of Human Rights, Mr. Holman says:

"Generally it is proposed that the covenant will back up the declaration. In other words, under the guise of promoting acceptance of the principles of the declaration on a voluntary basis, the program envisaged by its sponsors is one of successive commitments by this government in separate steps * * *."

The Human Rights Commission is still working on the proposed covenant, which is confined to most but not all of the civil rights enumerated in the declaration. The covenant, unlike the declaration, is intended to have binding legal force as a treaty in favor of and against those nations which choose to become parties to it. It is not a finished product and numerous revisions will certainly be made. It is difficult to appreciate the enormity of the task which faces the Human Rights Commission. It has already worked on these documents for 2 years.

In any event, nothing will be "put over" on the United States. There will be ample opportunity for the Senate to discuss each and every provision of the covenant when it comes up for ratification. Mr. Holman unwittingly creates the impression that any approval of the covenant by the United Nations, or mere formulation for that matter, is tantamount to ratification by the United States. This, of course, is not so.

The Genocide Convention is another part of the United Nations program on human rights. It was approved by the General Assembly and has been signed by 20 nations, one of which was the United States. However, it has no legal effect until such a time as it shall have been formally ratified by no less than 20 nations and shall be binding only on such ratifying nations. It should come before the Senate during the 1950 session.

This convention creates an international crime called genocide which is defined in article II as follows:

"In the present convention, genocide means any of the following acts committed with intent to destroy in whole or in part, a national, ethnical, racial, or religious group, as such:

"(a) Killing members of the group;

"(b) Causing serious bodily or mental harm to members of the group;

"(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

"(d) Imposing measures intending to prevent births within the group;

"(e) Forcibly transferring children of the group to another group."

Mr. Holman makes the point that the causing of "mental harm" to a member of a group is an act of genocide under the convention. The text of article II (supra) reveals that there must be the requisite "intent to destroy in whole or in part, a national, ethnical, racial, or religious group, as such." Also, genocide involves an act not against a single member of a group but against a plurality. Further, it is not mental harm but serious mental harm which is mentioned in article II. Mr. Holman assumes that an organization advocating birth control may be punishable. This is not in accordance with the text. Under article II, section d, it is not the advocacy of birth control but the imposition of measures to prevent birth which is punishable. It is the difference between voluntary and involuntary action. Even the imposition of measures intended to prevent birth is not punishable where proper motives or intent exist or can be found to exist. The "intent to destroy" must be present.

It is hoped that no impression has been conveyed that no problems exist in the international field of human rights. On the contrary, they are many and difficult, but there is no reason to believe that these problems are incapable of solution. Progress has been noted from the beginning. In any event, there is a great deal to be said on the other side, and the picture is not as dark as Mr. Holman paints it.

Senator McMAHON. I have a statement by Mrs. Agnes Waters, which will be incorporated in the record at this point.

(The matter referred to is as follows:)

STATEMENT OF MRS. AGNES WATERS, WASHINGTON 7, D. C., AGAINST THE RATIFICATIONS OF THE GENOCIDE TREATY (EXCERPTS)

Mr. Chairman, and members of the committee, my name is Mrs. Agnes Waters; my address is Box 3560, Washington 7, D. C. I appear here in opposition to the Senate ratification of the genocide treaty.

I charge that this genocide treaty is a form of warfare against the people of the United States of America.

The United States Senate has no right to ratify a treaty that will or may operate against the general welfare of the people of the United States or one that will or may become an instrument of torture, or of warfare, or of mass murder, or of extralegal liquidation machinery in the hands of our enemies both within and without our borders by which any American, in peace or war, can be accused of violations of this treaty or any parts of it and seized and taken before international courts or other international criminal tribunals and tried and executed by the enemies of the Christian peoples of the United States. And that is exactly what this genocide treaty is designed to do to the people of the United State of America, by ratification of the Senate of the United States.

WARNING! RUSSIA AND FIVE OF HER SATELLITE COUNTRIES HAVE RATIFIED THESE TREATIES

Now the people are the Government, and the Senate has no right to place in jeopardy our lives and liberties and place us in the hands of our enemies with this vile treaty. The Senate has no power to make treaties that may place in jeopardy our lives and liberties.

I charge that this genocide treaty is absolutely unconstitutional and a violation of rights, as are all the other series of United Nations treaties now up before the Senate. These treaties constitute a subversion of the powers of the Government of the United States and are a legislative coup d'etat to our enemies, which cannot be lawfully done to our people. These treaties transfer the sovereign rights of self-government from the people to a foreign power under the deceptive guise of "protecting" human interests. These treaties are a threat to the security of the United States in that they would successfully thwart and tie the hands of all our United States armed forces in either peace or war and stop Federal, State, and local police authorities from being able to put down strikes, insurrections, race riots, mob violence, sabotage, or defending the United States from her enemies. This treaty would be a most effective means to prevent the apprehension of spies and traitors, and should any spies or saboteurs or enemies be injured or killed through United States Army or police interference, it could be construed as a crime of "genocide" and in case of war would indict our entire Government for genocide.

THESE TREATIES IF RATIFIED ARE TYRANNY

This treaty and every other United Nations treaty is a violation of the rights of all Americans. Do you want the Senate to give you over to your enemies? What right have they got to do that to you?

Well, if they ratify any one of this series of vile treaties they become the supreme law, supersede all Federal, State, and local laws and you will have no recourse even to the right of calling upon your local police officers to try to stop deporting you from your own country. Why, you don't even have the right to get a United States lawyer or a writ of habeas corpus in America if these treaties become the supreme law of the land. And you will be amazed and outraged at the charges of murder and prostitution that you will have to face in some far-off hell-hole all alone with your enemies, with international criminal tribunals to try you—and for what? For nothing. And the insane asylums that are now full of Americans like you will be heaven alongside of the tortures that you will endure—you, an innocent Christian—in the future. These treaties completely cover all United States crimes and domestic matters now handled by our courts here, and they take them out of these kindly American hands and put them into an international court.

This is a direct attack upon every American. This constitutes legalized illegal warfare against us. What are you going to do about it. I want to know.

If this genocide treaty is ratified by the United States Senate, it guarantees to Russia the winning of the third world war, for this treaty not only would effectually prevent our being able to defend our own shores and our people but it gives the power to our enemies to lie about and harass our citizens, our police, our FBI, our officials, and our armies with charges of "genocide" or inciting to "genocide."

Now, some of you who have been supporting the idea of a world government, can you be sure you have not been used?

These treaties are a threat to the security of the United States of America. They are a threat to every American.

It is one of the inherent rights and privileges, and the duty of every American to advocate the arrests, trials, and executions for treason of the traitors and enemies within our gates—that is also free speech, but this genocide treaty would stigmatize and subvert that right to one of crime against humanity—or "genocide" and reduce patriotism, a free press, and free speech, to a form of "genocide"; and, indeed, this treaty acts as a means of committing the crime of genocide against the great masses of the American people who oppose all enemies within or without. Are you going to sign our death warrants? I want to know. This treaty would effectually tie our hands in case of war. This treaty is a violation of the rights of all Americans and makes us subject to our enemies—a threat to national defense. It supersedes all Federal, State, and local laws and leaves us no recourse even to a writ of habeas corpus. It would deport us from our own country, and it makes us subjects of a foreign power and liable to trial before international criminal courts. And there are a series of treaties being readied for Senate ratification covering all sorts of domestic crimes and issues, especially that of prostitution whereby Christians can be accused.

This is a direct attack upon every American and a process whereby we can be disposed of behind the iron curtain, or held as white slaves.

Is this Senate no longer the United States Senate?

These United Nations treaties constitute legalized warfare against us. I demand these treaties be killed.

This treaty is treason and tyranny.

Senator McMahon. Are there any prospective witnesses here who have written statements which they would like to submit instead of testifying orally?

(None.)

Senator McMahon. I take it that you wish to testify orally.

We will have to postpone a future hearing subject to the call of the Chair.

(Whereupon, at 12:50 p. m., the hearing was adjourned, to reconvene upon the call of the Chair.)

THE GENOCIDE CONVENTION

THURSDAY, FEBRUARY 9, 1950

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
SUBCOMMITTEE ON THE GENOCIDE CONVENTION,
Washington, D. C.

The subcommittee met, pursuant to adjournment on February 9, 1950, at 10 a. m., in room G–16, United States Capitol, Senator Brien McMahon (chairman of the subcommittee) presiding.

Present: Senators McMahon, Lodge, and Hickenlooper.

Senator MCMAHON. Mr. Reporter, I have here a letter from Mr. A. W. Dulles, enclosing a statement in favor of the ratification; also a letter from Walter W. Van Kirk, and statements from Mr. Robert M. W. Kempner and Elizabeth A. Smart. Will you make these part of the record, please.

(Except for the Kempner and Smart statements the communications referred to will be found on pp. 545 to 546.)

LANSDOWNE, PA., *February 7, 1950.*

Mr. C. O'DAY,
Clerk, Senate Foreign Relations Committee,
Senate Office Building, Washington, D. C.

DEAR MR. O'DAY: I just received your telegram concerning the hearing on the Genocide Convention. Unfortunately, I have a bad case of flu and am therefore not able to appear in Washington this week.

In pursuance of your previous suggestion, I am attaching a statement for insertion into the printed record of hearings on the Genocide Convention. I think it will be of interest to the Senators.

The secret German document on genocide which forms part of my statement will probably be of great interest to the newspapermen on Capitol Hill and there are no objections against its publication.

Sincerely yours,

ROBERT M. W. KEMPNER,
Formerly United States Deputy Chief of Counsel for War Crimes, Nuremburg.

STATEMENT OF DR. ROBERT M. W. KEMPNER, LANSDOWNE, PA.

From 1945 to 1949, I served as United States War Crimes prosecutor in Nuremburg, Germany. During the last 3 years, I was in charge of the trial against Nazi diplomats and Cabinet members for mass murder of minority groups, also known as genocide, and for other crimes against humanity and peace.

In the course of my manyfold official and private contacts with people from nearly all walks of life and countries of Europe, I came to the conclusion that the signing of the Genocide Convention by the United States is absolutely necessary in order to maintain and strengthen our reputation in Europe. The democratic forces in Europe, before and behind the iron curtain, would lose faith in the United States and in the sincerity of our policy if we would deny our signature to an international instrument which they regard as a milestone in the fight against racial and religious persecution and a weapon for their own protection.

For the convenience of the Senate, I want to read into the record a key document of genocide which is of utmost importance as a pattern for future genocidal actions. It is the secret record of an interdepartmental conference of Nazi state secretaries of January 20, 1942, in Berlin. On that day, State secretaries and other top officials of the Third Reich organized the annihilation program for 11,000,000 Jews of Europe. I introduced this document on genocide as United States Government exhibit 1452 in the Nuremburg case of the United States against Ernst von Weizsaecker and other top German governmental officials.

The official English translation of this secret German document which has been captured by the United States Armed Forces in Germany and has been discovered in the files of the German Foreign Office is herewith attached (13 pages).

FEBRUARY 8, 1950. ROBERT M. W. KEMPNER.

[Official translation from the German language]

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[Stamp: Office of Chief of Counsel for War Crimes APO A. U. S. Army]

I. The following persons took part in the conference on the final Solution of the Jewish Problem held on 20 January 1942, in Berlin, Am Grossen Wannsee Nr. 56/58:

Gauleiter Dr. Meyer and Reichsamtsleiter Dr. Leibbrandt.	Reich Ministry for the Occupied Eastern Territories.
State Secretary Dr. Stuckard	Reich Ministry of the Interior.
State Secretary Neumann	Commissioner for the Four Year Plan.
State Secretary Dr. Freisler	Reich Ministry of Justice.
State Secretary Dr. Buehler	Office of the Governor General.
Under State Secretary Luther	Foreign Office.
SS Obergruppenfuehrer Klopfer	Party Chancellery.
Ministerialdirektor Kritzinger	Reich Chancellery.
SS Gruppenfuehrer Hofmann	Race and Settlement Main Office.
SS Gruppenfuehrer Mueller	Reichssicherheitshauptamt.
SS Obersturmbannfuehrer Eichmann	Reichssicherheitshauptamt (Reich Main Security Office).
SS Oberfuehrer Dr. Schoengarth Commander of the Security Police and the SD in the Government General.	Security Police and SD.
SS Sturmbannfuehrer Dr. Lange Commander of the Security Police and the SD for the General Districts Latvia, as deputy of the Commander of the Security Police and the SD for the Reich Commissariat for the Ostland.	Security Police and SD.

II. At the beginning of the meeting the Chief of the Security Police and the SD, SS—Obergruppenfuehrer Heydrich, reported his appointment by the Reichmarshal to serve as Commissioner for the Preparation of the Final Solution of the European Jewish Problem, and he pointed out then that the officials had been invited to this conference in order to clear up the fundamental problems. The Reichsmarschall's request to have a draft submitted to him on the organizational, physical and material requirement with respect to the Final Solution of the European Jewish Problem, necessitated this previous general consultation by all the central offices directly concerned, in order that there should be coordination in the policy.

The primary responsibility for the administrative handling of the Final Solution of the Jewish Problem will rest centrally with the Reichsfuehrer—SS and the Chief of the German Police (Chief of the Security Police and the SD)—regardless of geographic boundaries.

The Chief of the Security Police and the SD thereafter gave a brief review of the battle conducted up to now against these enemies. The most important phases are

a/ forcing the Jew out of the various phases of the community life of the German people

b/ forcing the Jews out of the Lebensraum of the German people.

In execution of these efforts there was undertaken—as the only possible provisional solution—the acceleration of the emigration of the Jews from Reich territory on an intensified and methodical scale.

By decree of the Reichsmarschall a Reich Central Office for Jewish Emigration was set up in January 1939, and the direction of this office was entrusted to the Chief of the Security Police and the SD. It had in particular the task

a/ of taking all steps for the *preparation* for an intensified emigration of the Jews.
b/ of *steering* the emigration stream.
c/ of expediting the emigration in *individual cases.*

The objective of these tasks was to clear the German Lebensraum of Jews in a legal way.

The disadvantages which such a forcing of emigration brought with it were clear to all authorities. But in view of the lack of alternative solutions, they had to be accepted in the beginning.

The work connected with the emigration had been in the time following not alone a German problem, but also a problem with which the officials of the target countries, that is, the countries of immigration had had to contend. The financial difficulties, like the increasing of the amounts that the various foreign governments required the immigrant to have and required as immigration tax, the lack of shipping passages, current sharper immigration limitation or stopping, extraordinarily increased the difficulties of the emigration program. Despite these difficulties, altogether an approximate 537,000 Jews were made to emigrate from the time of taking over of power to the target day of 31 October 1941. Of these there were

since 31/I /1933	from the Old Reich	c. 360,000
since 15/III/1938	from Austria (Ostmark)	c. 147,000
since 15/III/1939	from the Protectorate Bohemia and Moravia	c. 30,000

The financing of the emigration was accomplished by the Jews or the Jewish—political organizations themselves. To avoid having the proletarianized Jews remain, the principle was followed of having Jews with fortunes finance the emigration of the Jews without means; here a proportionate assessment or emigration tax was prescribed, according to the fortune, which was used for meeting the financial obligations connected with the emigration of Jews without means.

Besides the raising of these Reichsmarks, foreign exchange for fees and the immigration tax was needed by the immigrant. To spare German foreign exchange funds, the Jewish financial institutions abroad were asked for the necessary foreign exchange. Thus, the contributions of these foreign Jews up to October 30, 1941 amounted to approximately 9,500,000 dollars.

Meanwhile, in view of the danger of an emigration during the war and in view of possibilities in the East, the Reichsfuehrer SS and Chief of the German Police banned all Jewish emigration.

III. The emigration program has now been replaced by the evacuation of the Jews to the East as a further solution possibility, in accordance with previous authorization by the Fuehrer.

These actions of course, are to be regarded only as a temporary substitute; nonetheless here already the Solution of the Jewish Problem is of great importance.

In the course of the final solution of the European Jewish problem approximately eleven million Jews are involved. They are distributed among the individual countries as follows:

Country	*Number*
A. Original Reich Territory	131,800
Austria	43,700
Eastern Territories	420,000
Government General	284,000
Bialystok	400,000
Protectorate of Bohemia and Moravia	74,200
Esthonia—free of Jews.	
Latvia	3,500
Lithuania	34,000
Belgium	43,000

	Country		*Number*
A.	Denmark		5,600
	France:		
	Occupied Territories		165,000
	Unoccupied Territory		700,000
	Greece		69,600
	The Netherlands		160,800
	Norway		1,300
B.	Bulgaria		48,000
	England		350,000
	Finland		2,300
	Ireland		4,000
	Italy including		
	Sardinia		58,000
	Albania		200
	Croatia		40,000
	Portugal		3,000
	Rumania, including Bessarabia		58,000
	Sweden		8,000
	Switzerland		18,000
	Serbia		10,000
	Slovakia		88,000
	Spain		6,000
	Turkey (European part)		55,500
	Hungary		742,800
	U. S. S. R.		5,000,000
	Ukraine	2,994,684	
	White Russian, excluding Bialystok	446,404	
	Total	over	11,000,000

In the Jewish population figures given for the various foreign countries, however, only those of Jewish faith are included, as the stipulations for defining Jews along racial lines still are in part lacking there. The treatment of the problem as regards the general attitude and viewpoint will meet with certain difficulties in the various countries, especially in Hungary and Roumania. It is still possible today in Roumania, for example, for the Jew to acquire for money the right documents to give him official proof of a foreign nationality.

The influence of the Jews in all territories in the U. S. S. R. is known. In the European part of Russia there are perhaps five million Jews, in Asiatic Russia hardly ¼ million.

Broken down according to occupations, the Jews living in the European part of the U. S. S. R. were about as follows:

In Agriculture	9.1%
As Urban Workers	14.8%
In Commerce	20.0%
Employed as Government Workers	23.4%
In Private Professions, Medicine, Press, Theater, etc	32.7%

Under proper direction, the Jews should now in the course of the final solution, be brought to the East in a suitable way for use as labor. In big labor gangs, with separation of the sexes, the Jews capable of work are brought to these areas and employed in road-building, in which task undoubtedly a great part will fall out through natural diminution.

The remnant that finally is able to survive all this since this is undoubtedly the part with the strongest resistance—must be given treatment accordingly, since these people, representing a natural selection, are to be regarded as the germ cell of a new Jewish development, should they be allowed to go free. (See the experience of history.)

In the program of the practical execution of the final solution, Europe is combed through from the West to the East. The Reich area, including the Protectorate of Bohemia and Moravia, will have to be taken in advance, alone for reasons of the housing problem and other social-political necessities.

The evacuated Jews are brought first group by group into the so-called transit ghettos, in order from there out to be transported farther to the East.

An important provision for the whole execution of the evacuation, as SS Obergruppenfuehrer Heydrich explained further, is the exact establishment of the category of persons who are to be included.

It is intended not to evacuate Jews over 65 years of age, but to remove them to a ghetto for the aged—Theresienstadt is under consideration.

Along with these old-age classes of the perhaps 280,000 Jews who on 31 October 1941 were in the Old Reich and in Austria, perhaps 30% are over 65 years old—they will also be taken to the ghettos for the aged, the Jews who are serious war-wounded cases and Jews with war decorations (Iron Cross, First Class). With this appropriate solution the many petitions for exceptions will be eliminated with one blow.

The beginning of the individual larger evacuation actions will depend very much on the military development.

With regard to the handling of the Final Solution in the European areas occupied and influenced by us, it was proposed that the competent officials in the Foreign Office should confer with the competent specialists of the Security Police and the SD.

In Slovakia and Croatia the matter is no longer too difficult, as the most essential problems in this respect have already been solved there. In Roumania likewise the government has meanwhile appointed a commissioner for Jewish affairs. For settling the problem in Hungary, it will be necessary in the near future to force upon the Hungarian government acceptance of an advisor on Jewish problems.

With regard to the preparations for the settling of the problems in Italy, SS—Obergruppenfuehrer HEYDRICH thinks a liaison with the Police Chief in these matters is suitable.

In occupied and unoccupied France the taking of the Jews for evacuating can in all probability proceed without great difficulties.

Under State Secretary Luther stated at this point that in dealing with the problem in a few countries, such as in the Scandinavian ones, difficulties would come up, and it is therefore advisable, to postpone action in these countries for the time being. In consideration of the small number of Jews in question here, this postponement constitutes anyway no appreciable limitation.

On the other hand, the Foreign Office sees no great difficulties for the Southeast and West of Europe.

SS—Gruppenfuehrer Hofmann intends to ask to have an official of the Race and Settlement Main Office sent along to Hungary for general orientation, when the affair is started there by the Chief of the Security Police and the SD. It was decided to assign this official to the Race and Settlement Main Office, who is not to be active, temporarily in the official capacity of assistant to the Police Attaché.

IV. In the course of the Final Solution plans, the Nuremberg Laws are in a certain degree to form the basis, and accordingly, the complete settlement of the problem is to include also the solution of the mixed marriage and the Mischling problems.

In connection with the memorandum of the Chief of the Reich Chancellery, the Chief of the Security Police and the SD discussed the following points, for the time being theoretically:

1.) *Treatment of the 1st Degree Mischlings* [50 percent Jewish]

1st Degree Mischlings are to be treated the same as the Jews as regards to the Final Solution of the Jewish Problem.

For this treatment exceptions will be made in the case of:

a) 1st Degree Mischlings married to persons of German blood, from whose marriage there are children (2nd Degree Mischlings). These 2nd Degree Mischlings are to have essentially the same position as Germans.

b) 1st Degree Mischlings for whom the exception approvals for certain groups have been accorded previously by the highest authorities of the Party and the State.

Each individual case must be examined and the possibility is not to be excluded that the decision may be retaken in the Mischling's disfavor.

Conditions for the granting of an exception must always be the fundamental merits of the Mischling *himself* (Not merits of the racial-German parent or marriage partner).

The 1st Degree Mischling excepted from the evacuation is to be sterilized in order to prevent any offspring and to settle the Mischling problem once and for all. The sterilization takes place on a voluntary basis. It is, however, the condition for remaining in the Reich. The sterilized "Mischling" is afterwards to be free from all restrictive stipulations to which he has previously been subject.

2. Treatment of the 2nd Degree Mischlings [25 percent Jewish]

The 2nd Degree Mischlings are to be treated in principle like persons of German blood, *with exception of the following cases*, in which the 2nd Degree Mischlings are to have the same position as Jews:

a) Derivation of the 2nd Degree Mischlings from a bastard marriage (both parents Mischlings).

b) Racially very unfavorable appearance of the 2nd Degree Mischling, so that even in appearance he is considered a Jew.

c) Especially bad police and political appraisal of the 2nd Degree Mischling showing that he feels and conducts himself like a Jew.

But even in these cases exceptions are not to be made if the 2nd Degree Mischling is married to a person of German blood.

3) Marriages between Jews and persons of German blood

From case to case decisions must be made here as to whether the Jewish partner is to be evacuated or whether, in consideration of the effects of such a measure on the German relatives in this mixed marriage, he is to be transferred to a ghetto for the aged.

4) Marriages between 1st Degree Mischlings and Persons of German blood

a) Without children. If there are no children from this marriage the 1st Degree Mischling should be evacuated, or removed to a ghetto for the aged. (The same treatment as in marriages between full Jews and persons of German blood, point 3).

b) With children. If there are children from this marriage, (2nd Degree Mischlings), they are—*when they are to have the same position as Jews* to be evacuated along with the 1st Degree Mischling, or they should be transferred to a ghetto. Insofar as these children *are to have the same position as Germans* (normal cases), they are to be expected from the evacuation and here also the 1st Degree Mischling is to be excepted.

5) Marriages between 1st Degree Mischlings and 1st Degree Mischlings or Jews

In these marriages all parties (including the children) are to be treated like Jews and therefore are to be evacuated or transferred to a ghetto for the aged.

6) Marriages between 1st Degree Mischlings and 2nd Degree Mischlings

Both parties to the marriage, regardless of whether or not there are children, are to be evacuated, or are to be transferred to a ghetto for the aged, since the children in question usually are racially of a stronger Jewish physical type than the 2nd Degree Mischlings.

SS—Gruppenfurher HOFMANN is of the opinion that extensive use must be made of sterilization; since the Mischling when confronted with the choice as to whether he is to be evacuated or sterilized would prefer to submit to sterilization.

State Secretary Dr. Stuckart states that the practical execution of the possibilities just discussed for settling the mixed marriage and the Mischling problems in this way would entail an endless administrative task. However in order to take always into account the biological actualities, State Secretary Dr. Stuckart suggested that compulsory sterilization be undertaken.

In order to simplify the mixed marriage problem further possibilities must be considered with the objective that the legislator should perhaps say: "These marriages shall be deemed dissolved".

In connection with the problem of the effect of the Jewish evacuation from the economic life, State Secretary Neumann stated that the Jews employed in war-important industries could not be evacuated for the present, as long as there were no replacements available.

SS—Obergruppenfuehrer Heydrich pointed out that these Jews, in accordance with the directives approved by him for the execution of the current evacuations, would not be evacuated.

State Secretary Dr. Buehler states that the Government General [of occupied Poland] would welcome *the initiation* of the Final Solution of this problem *in the Government General*, because here for once the transport problem plays no out-of-the-ordinary role, and here labor commitment considerations would not hinder the course of this action. Jews would have to be removed as quickly as possible from the territory of the Government General because just here the

Jew constitutes an eminent danger as a bearer of diseases; furthermore, he brings the economic structure of the country constantly into disorder by his black market activities. In addition, out of the approximately two and one half million Jews here, the majority were *unfit for work.*

State Secretary Dr. Buehler further states that in the Government General the solution of the Jewish problem is primarily the responsibility of the Chief of the Security Police and the SD; his work has been supported by the agencies of the Government General. He has only the one request that the Jewish problem in this territory be solved as quickly as possible.

In conclusion, the various kinds of solutions were discussed. To this point, both Gauleiter Dr. Meyer and also State Secretary Dr. Buehler advocated that certain preparatory tasks in the course of the Final Solution be performed immediately in the respective territories; in this, however, any disturbing of the population must be avoided.

The conference was concluded with the request of the Chief of the Security Police and the SD that the participants of the conference should give him their support in the execution of the work towards the Solution.

* * * * * * *

The Wannsee protocol—as we called this document in Nuremberg because the meeting took place in the Berlin suburb of Wannsee—became the first genocidal instrument of world history. Other conferences followed about legal and technical problems of the implementation. In the files of the German Foreign Office, we discovered unnumerous progress reports on the execution of the Final Solution in the various Nazi controlled countries. Historically, the most interesting documents are concerned with the pressure of Nazi Diplomats brought against Benito Mussolini in Italy and Nikölous von Horthy in Hungary for their lack of initiative in assisting the Nazi annihilation program in their own countries. At the same time, Hay Amin el Husseiini, the Grand Mufti of Jerusalem, was extremely busy in advising the Nazi government about any gaps enabling the escape of Jewish children and adults to Israel.

The mass murder of six and a half million Jews in Europe according to the annihilation plan is now a matter of history. Only about three million Jews survived because the Allied armies crashed the genocidal machinery of the Third Reich before the program was entirely executed.

Statement on Genocide Convention by National Woman's Christian Temperance Union

I am Miss Elizabeth A. Smart. My address is 1730 Chicago Avenue, Evanston, Ill. I am representing the National Woman's Christian Temperance Union.

The National Woman's Christian Temperance Union was organized out of the revolt of women against the cruelties practised in the name of private profit by one group of exploiters—the liquor traffic—against their pitiful victims, then known as drunkards and now called alcoholics, but under whatever name they are called, tragic witnesses to man's inhumanity to man.

We expanded our sympathies with the problems of humanity to include the whole world of our sister women, and the whole human race.

We have stood against greed and exploitation, wherever it was practised. The labor movement has forgotten, but on the WCTU's first statement of principles stood the clause: "We believe in the 8-hour day and in courts of conciliation and arbitration." We believed in them and we fought for them, and we had a not insignificant share in helping to win them.

The past decade and a half has witnessed a retrogression in human progress which has appalled those of us who cannot be misled by slogans or tricks of psychology, and do not rush along happily with the unthinking to the inevitable precipice.

The nineteenth century and the first two decades of the twentieth century saw great strides in our very incomplete progress toward civilization. The rights of man, of individual human beings as such, of women, of children—all came in for a consideration they had not previously received in the history of the world.

We thought we had abolished human slavery. We thought we had brought to a minimum the traffic in women and children. We thought we were fast

reaching a goal in the abolition of the sale and use of narcotic drugs, including alcohol. We thought that the torture chamber was a relic of the Middle Ages. We thought that genocide had perished in the dust of the almost forgotten ruins of Carthage, Nineveh, and Rome.

We were deeply mistaken. A half-insane paperhanger from Austria taught the German people and the world that there were depths in the human heart unexplored, but containing all the horrors ever practised in the Roman arena or the Spanish Inquisition.

It has become a matter of supreme importance that we have a well-defined code covering this revived crime of genocide, and that it be backed by the aroused public opinion of the world. Certainly the weight of the influence of the United States should be thrown into the scale on the side of humanity.

Little children should not be torn from their families for the purpose of indoctrination in some formula for the advancement of power politics. We never want to see gas chambers again and human bodies stacked like cordwood because anybody preaches the deadly doctrine of hatred against other human beings because of their race or their religion. Working men and women to death in labor camps should be recognized for the fiendish crime against humanity which it is. Even a written condemnation, adopted by the responsible representatives of a majority of the nations of the world would have its effect.

The text of the proposed convention has hedged about and safeguarded the rights of the nations themselves to determine under what conditions extradition shall be granted in articles VI and VII, so that the power of Congress to name those conditions is in no way abridged.

We urge you to put the United States on record in favor of doing all possible to guard against the present continuance, or future renewal, of any of these acts by ratifying this convention. That is the kind of leadership which will be recognized everywhere by the plain people of the world as leadership in the right direction, leadership to be followed. Not through force or the power of compulsion, but by the overwhelming appeal of moral leadership will we win the peoples of the world to a standard under which we may hope for peace and the recognition by all, of the rights of others, and of each one of us.

We ask you earnestly also not to forget that one of the weapons for the effecting of this awful crime of murder or degeneration of a whole race was the use of narcotics, including alcohol.

We know that Japan forced conquered China to grow opium, and to market opium for the purpose of degrading and destroying the Chinese people. We know that Germany used narcotics and used alcohol to deaden and stupefy her unhappy subject peoples, for whose liberation we paid so great a price. And at whose instigation was the hot spiced wine sent into the Maginot line trenches—the wine on which France's military leaders and doctors and scientists blame her easy conquest by German forces?

While you are attempting to guard humanity as a whole by the only effective weapon we have today, the force of world public opinion, do not forget that our own Nation is vulnerable and that the destruction of our youth can render us open to our enemies, and nullify our strength on which the world that is yet free relies to preserve its freedom, and to which the world that is still enslaved looks for liberation. We need a little domestic legislation there.

Senator McMahon. Mr. Barger, representing the National Economic Council of New York, who appears in opposition, is our first witness.

STATEMENT OF HARRY S. BARGER, REPRESENTING NATIONAL ECONOMIC COUNCIL, NEW YORK CITY

Mr. Barger. May it please the committee, my name is Harry S. Barger, B-a-r-g-e-r, of this city. Mr. Merwin K. Hart, president of the National Economic Council, was unable to appear here this morning in keeping with the assignment given him, and he has asked me to appear and present his statement for him. It will be brief, and if I may, at one or two points I would like to offer a few suggestions on my own.

NEWNESS OF THE TERM "GENOCIDE"

The National Economic Council opposes ratification of this convention for reasons that I shall state presently.

The word genocide is new. It is not even mentioned in the 1948 edition of Webster's dictionary.

An editorial in the New York Times of August 26, 1946, pointed out that a new word, genocide, had cropped up in the Nuremberg trials. The name was coined by Prof. Raphael Lemkin, of Duke University, who was an adviser on foreign affairs to our War Department.

The preamble to this convention recites that genocide—

> is a crime under international law * * * condemned by the civilized world.

If I may add at that point, as I understand it, the word is used to define an offense for the very first time in this pact.

It is no new idea that murder is a crime. The murder of many is just so much worse than the murder of one. No one that I know of disagrees with this.

The preamble recites "that at all periods of history genocide has inflicted great losses on humanity."

I would think this true only in a general way. When the city of Jericho was surrounded and captured by the Hebrews, it is recorded in the Old Testament that every man, woman, and child was put to the sword. This I suppose was genocide. It seems to have been common practice in those days. Hitler, in Germany, exterminated large numbers of non-Nazis, both Christians and Jews. This was genocide.

Senator LODGE. At that point, don't you think that was a tragic mistake, a tragic crime and sin?

Mr. BARGER. Unquestionably, whether it be called genocide or lynching or what not. Whoever does it, it is nevertheless a crime.

Senator LODGE. Your statement did not indicate that you deplored the extermination by Hitler of the non-Nazis, both Christians and Jews.

Mr. BARGER. I think it was a crime against the laws of God and man to do it in any country, and by any means or by anybody.

Senator LODGE. I am glad to hear you say that, because your written statement does not say that.

Mr. BARGER. No; that is right.

SOVIET AND ZIONIST EXTERMINATIONS

It was in the past 2 or 3 years, in at least one village in Palestine, namely Deir Yazin, the Zionists exterminated every man, woman, and child. This was genocide. Genocide is certainly being practiced today among the 10 or 15 million human beings in the Soviet concentration camps. According to evidence available, it is practiced in all the iron curtain countries.

If this convention merely provided for some action to administer punishment to those national leaders responsible for mass extermination, and if such scheme could practically be made to work, something might be said for it. But unless you are ready to go out and conquer another country, it is not practical to punish either that country or its leaders. America tried that with respect both to Germany and

Japan, and the results have been, to say the least, not wholly satisfactory, even to us.

So, the only practical part of this convention, if indeed that is practical, is to prevent private individuals from committing genocide, or punish them if they commit it.

AN INTERNATIONAL FEPC

As a matter of fact, this pending convention goes much further than merely to outlaw mass murder. Its effect, and I believe its real purpose, is to set up an international FEPC.

If I may, I should like to suggest that the ultimate effect of it will be to punish in every country the crime of lynching, whereas I think that crime should be left for punishment to the country wherever it happens.

For instance, in one of our States, I think the punishment should be left to the State where they would have trial by juries of their peers and the punishment inflicted by courts of justice set up under American standards.

BELIEVES IT APPLIES TO LYNCHING

Senator McMAHON. I might add that the legal opinions given to us by the Solicitor General and the Counsel of the State Department do not support your statement that an individual murder, an individual lynching, would come within the scope of the treaty. I do not believe that that is correct.

Mr. BARGER. What I had in mind particularly was where they had very serious mob disturbances, let us say in Illinois a good many years ago, where a great many people combined to and did murder and kill or lynch or assassinate, whatever you want to call it, another large number of people. That was the particular kind I had in mind, more than one particular individual.

Senator McMAHON. Yes, but then the intention has to be to continue on from Illinois to Indiana and then down to Georgia to wipe them all out, you see. The intent has to be of that kind.

Mr. BARGER. You mean it would have to go beyond just one State's borders?

Senator McMAHON. I would think so.

Mr. BARGER. I am afraid the language of the pact is so much wider than that that it could be made to apply to lynching by a mob in one particular State. That is simply my view of it.

Senator McMAHON. Go ahead.

A SURRENDER OF SOVEREIGNTY

Mr. BARGER. Like most of the other international agreements we are asked to approve, it calls for the transfer of a substantial measure of our sovereignty as a Nation to an international group in which we would have a distinctly minority vote.

At that point, if I may, I would like to add this suggestion, in considering this measure, to bring alongside of it, and together with it, the other measures of the ITO and the ILO and the world government proposition, bring them all together, and consider them as one,

because to my mind they form a pattern which, if carried out, is likely to take away from this Government a good deal more of its sovereign power than it can afford to give up.

REASONS FOR OPPOSING THE CONVENTION

We are opposed to this convention for the following reasons:

1. Even if it sought merely to punish or, what would be even more difficult, to prevent, mass murder, there would be no adequate way to enforce it. This would be true even if it were wise to have such an international agreement, and we do not think it would be wise.

CONVENTION REGULATES THOUGHT

2. The convention goes much further than to punish or prevent mass murder. It aims to regulate almost the thought, and certainly the acts, including the words and writings, of individuals.

For one of the five definitions of genocide is, "with intent to destroy, in whole or part, a national, ethnical, racial, or religious group," to cause "serious bodily or mental harm to members of the group."

Government bureaus are seldom known to minimize their authority. They tend rather to extend their authority, and to stretch the interpretation of the language which fixes their authority. We have no reason to believe an international bureau would take any different attitude. And it is reasonable the interpretation of "mental harm" would be stretched to the utmost.

Thus, it is clear that the doing of an act by an individual such as the refusal of employment, or blackballing a person for membership in a union or social club, or the publishing of any comment, no matter how mild, with respect to any member of a minority, could be doomed by the "international penal tribunal" set up by this convention to constitute "mental harm" and hence, under the clear provisions of the Genocide Convention, to be worthy of punishment.

Three of the five acts described by article III of the convention to be "punishable" are—

(*c*) Direct and public incitement to commit genocide.
(*d*) Attempt to commit genocide.
(*e*) Complicity in genocide.

Under some one or other, or possibly all three, of these provisions, the slightest reference to a member of a minority race or religion—such as a newspaper identifying a man under arrest as a Negro, might be deemed a punishable act. Certain American newspapers have already been "induced" not to identify in their columns an individual by race or color.

Article IV provides that—

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.

In view of the practical difficulties in the way of punishing either nations or the heads of nations, it is clear that the net effect of these provisions will be the effect upon individuals.

Hence, I repeat, this convention provides chiefly an international FEPC, together with an international antilynching bill. It is de-

signed, apparently to take a short cut which will make unnecessary, or at least less important, the passing of FEPC laws by the Congress or by the legislatures of the several States.

TRIAL BY AN INTERNATIONAL PENAL TRIBUNAL

3. We oppose this convention because it is clear, under article VI, that persons charged with genocide may be tried not only by a competent tribunal in the state in question, that is, for instance, in the United States, but also "by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction."

If the Senate should ratify this convention, we would be going back toward one of the odious conditions which prevailed when the Declaration of Independence complained, inter alia, that King George III—

> had given his assent to acts of pretended legislation * * * for transporting us beyond seas to be tried for pretended offenses.

Senator LODGE. Mr. Chairman, I just can't follow that argument at all. It seems to me if anybody is to be tried in an international tribunal outside of the United States there would have to be an additional treaty in which we would express our approval of the setting up of that tribunal.

Mr. BARGER. It seems to be Mr. Hart's thought that this presently proposed treaty is adequate to accomplish that purpose.

Senator LODGE. I do not see how he can possibly follow that out. It seems to me words have absolutely no meaning if he can follow that out. Under this Genocide Convention as it stands, it seems to me clear without any doubt at all that anybody who violates the treaty is to be tried in a court in this country. The only way he could be tried in any other tribunal would be in a tribunal "in a country which shall have accepted its jurisdiction." In other words, we would have to have a separate treaty and a separate action.

Mr. BARGER. You may be right about that.

Senator LODGE. It seems to me that that is just fantastic, and if there are arguments against this I want to know what they are, but this, it seems to me, is no argument at all.

Mr. BARGER. In this respect I am merely presenting Mr. Hart's contention on the matter, and the language is very broad, I think.

Senator MCMAHON. Which language, yours, Hart's, or this?

Mr. BARGER. The language of the proposed treaty itself.

LANGUAGE IS DEFINITE

Senator LODGE. Broad? I think it is terribly definite—

> persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the state in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction.

Thatis not broad at all. That is very definite. You could not make it any more definite. If there is to be an international court, we would have to accept the jurisdiction of that court, and that would mean another treaty and another two-thirds vote and another set of hearings.

Mr. BARGER. I think, however, you will agree with me that it does not specify the necesisty of an additional treaty.

Senator LODGE. "Shall have accepted its jurisdiction." How do you accept the jurisdiction? You accept the jurisdiction by treaty.

Mr. BARGER. Won't the acceptance of this particular genocide treaty accomplish that?

Senator LODGE. By its expressed terms it does not.

Mr. BARGER. As I say, I am merely presenting Mr. Hart's view on that.

Senator MCMAHON. Tell him he didn't make much of an impression with that one.

Senator LODGE. He has to do better than that.

Mr. BARGER. It is true that article VII provides that—

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

But in the same article is the provision that—

The contracting parties pledge themselves in such cases to grant extradition in accordance with their lawes and treaties in force.

And it is likely that if the forces back of this Genocide Convention are strong enough to secure the ratification of this pending convention, they will be strong enough to see that extradition treaties shall be such as to insure the prompt handing over of accused persons to the international penal tribunal.

Senator LODGE. That is what I call a complete non sequitor.

A NEW BURDEN AND LAW

Mr. BARGER. He suggests it as a possibility; I will say that.

The American people today, most of whom are hard pressed to meet the exigencies of life and living, are burdened with a mass of statutes, rules, and regulations emanating from Federal, State, and local authorities. It is probably true that there is not a mature person in the United States who does not consciously or unconsciously violate some statute, rule, or regulation every day of his life. But people have the benefit of the settlement through judicial decisions or statutory amendments of a good many points of law that formerly were not clear.

A convention such as this would, in the first place, superimpose upon all existing statutes an entirely new and additional body of law. One of the reasons this country has been so prosperous is that its people have been relatively free. Ratification of this convention, tying the American people into the legal systems of other countries, many of them having totally different concepts of law, would further grievously burden the American people in a way that is not only unnecessary but extremely unwise.

THE WORK OF A MINORITY

It is perfectly clear that this measure is the work of a minority. Like so many measures that have been sent to the Congress by international agencies, or by the administration, it authorizes powers wholly contrary to the interest of the American people. It has been

prepared by alien-minded persons, or by persons who have lost faith in America and in America's ability to serve the world by example, rather than through organized force.

GIVES FOREIGN GOVERNMENTS THE RIGHT TO INTERVENE IN OUR DOMESTIC AFFAIRS

This measure is an attempt to give other nations, through an irresponsible international body, the right to intervene in our internal affairs. That would reduce our own liberty. Similarly, it gives us the right to intervene in the affairs of other nations. That could lead to war.

In our opinion, the American people are getting very tired of the avalanche of proposed treaties and commitments, with all of their implications.

We urge this committee to reject this proposed treaty and to reject it in the manner of the Senate Judiciary Committee in 1937, when, in rejecting the court packing bill, it said in substance it hoped that never again would such a measure be submitted to the Congress.

That, I think, might be said of this proposed treaty which would give away a part of the sovereignty of the United States.

NO POWERS IN THE PRESIDENT AND CONGRESS TO GIVE UP SOVEREIGNTY

Now, if I may add just one brief suggestion, that is that in my humble opinion as a lawyer, neither the Senate by treaty nor the Senate and the House by joint legislation can constitutionally invalidate or surrender any part of the sovereignty of this country, and I do not think anyone will ever find any reported case where a treaty that did so was held to be the supreme law of the land.

Senator LODGE. How about the treaty on tampering with submarine cables? Didn't that give up part of our sovereignty, and hasn't that been perfectly workable?

Mr. BARGER. It certainly does not give up as much sovereignty as this.

Senator LODGE. It gives up some sovereignty. Every treaty gives up some sovereignty.

Mr. BARGER. I think that, sir, would be more of a civil matter that would relate to constitutional contractual relations between the countries.

Senator LODGE. We have had it stated officially here that there are three treaties similar to this: One is tampering with submarine cables, another is pellagic seals, and the third is slavery, and of course when you enter into a treaty of that kind you limit your sovereignty insofar as engaging in slavery is concerned, otherwise there would not be a treaty. What harm have those treaties done?

Mr. BARGER. Do not those treaties provide for trial in the country where the offense happens to be?

Senator LODGE. Sure, and so does this. Now you are shifting the ground. You are not staying with me on the question of whether it gives up sovereignty. You are moving over into the question of where the party is to be tried.

All right, Mr. Barger; thank you.

Senator McMAHON. The next witness is Mr. James Finucane, associate secretary, the National Council for the Prevention of War, who apparently is for it with some reservations.

Mr. FINUCANE. That is correct, Senator.

STATEMENT OF JAMES FINUCANE, ASSOCIATE SECRETARY, THE NATIONAL COUNCIL FOR THE PREVENTION OF WAR

Mr. FINUCANE. My name is James Finucane, associate secretary, National Council for the Prevention of War. Our main office is at 1013 Eighteenth Street NW., in Washington.

The National Council for Prevention of War looks with favor and approbation on any move to prevent genocide. It therefore hopes that the Senate will consent to the ratification of the convention on genocide which has been signed by the President.

However, there is no short cut to decency. And this convention should not be mistaken for one. We cannot let the mere endorsement of this piece of paper take the place of a real improvement in the conduct of our domestic and international affairs.

PRACTICES INCONSISTENT WITH THE CONVENTION

Believing this to be so, we call to the attention of this committee and through them, we hope, to the Members of the Senate at large, a number of present and projected practices which we believe to be inconsistent with the Genocide Convention. These inconsistencies must be resolved before the Senate's endorsement of this convention can appear as an act of good faith to the peoples of the world.

THE NEW BOMB

Blasting its way across the headlines of the Nation's press, the shocking news came last week that our Government has approved the construction of a nuclear bomb 10 to 1,000 times more powerful than the uranium bomb, which devastated Japan. This bomb cannot be used for homicide. It is a pure and simple genocidal weapon, the use of which falls under the definition of article II of the convention: An act—

committed with intent to destroy, in whole or in part, a national * * * group—

I believe the Senator from Connecticut must have sensed the potential horror of this weapon when he made his speech last week asking for a method of doing away with the bomb under suitable guaranties.

Senator McMAHON. It did not escape you, however, that I also thought the President's decision to build it was a correct one? Apparently you disagree with that. We are probably in agreement as to the necessity of getting rid of it by effective methods, but I believe his decision to build it was a correct one in the present circumstances. It had to be built.

Mr. FINUCANE. I think the people would have had more confidence in the President's decision if a wider basis of consultation had been provided.

Senator LODGE. If the word "national" were taken out, would that, in your opinion, make the convention consistent with the decision to construct the hydrogen bomb? Obviously, you cannot drop bombs so as to destroy ethnical, racial, or religious groups. That is obviously impossible.

Mr. FINUCANE. Senator, I think it would to the extent that dropping a bomb on Russia as a nation, for example, would be the intent. But statements made in the United States by responsible people might lead one to make the construction that the hostility to Russia was based on anti-Slavism, or anticommunism, which is a political or cultural or racial ground.

Senator LODGE. Communism is a racial ground? You don't mean that.

Mr. FINUCANE. No, I don't mean that; except that many people in the United States, in commenting on Russia and in urging opposition to Russia and Russian communism, speak of the Slavs, and they speak of "oriental inscrutableness." For example, Winston Churchill speaks of an enigma wrapped in a riddle, and he uses the term "oriental" which would imply that the intent, if a bomb were dropped on Russia, in addition to being antinational, might also be antiracist or anti-political. But I think it would, to a certain degree, iron out the inconsistency if the word "national" were removed; yes.

Senator MCMAHON. Of course you realize, Mr. Finucane, that article II says:

> in the present convention, genocide means any of the following acts committed with intent to destroy in whole or in part a national, ethnical, racial, or religious group as such.

You recognize the restrictive nature of the words "as such" do you not?

Mr. FINUCANE. Yes; I think I do, Senator.

Senator MCMAHON. All right.

Mr. FINUCANE. Mere construction of this hydrogen bomb would be punishable under article III (b), "Conspiracy to commit genocide." This bomb cannot be exploded other than genocidally.

I think in the case of dropping it on Moscow it would be to destroy a number of persons of Russian nationality as such. I think if there were any Americans in there it would be purely accidental.

Senator MCMAHON. I just don't agree with your statement. I'm not going to argue with you, but I will register my disagreement.

Mr. FINUCANE. If we want to deal on the level with the world and with ourselves, then the Senate should either forbid the construction of hydrogen bombs or drop any pretense of meaning what this convention says. Conscience, of course, would choose the former.

THE ARGUMENT REDUCED TO "RIFLES"

Senator MCMAHON. Is your argument the same with relation to uranium bombs, or only hydrogen bombs?

Mr. FINUCANE. It is applied to uranium bombs too, yes.

Senator MCMAHON. Then would it apply to block busters that would take out a whole block?

Mr. FINUCANE. Yes, it would.

Senator MCMAHON. Then would it apply to a 500-pound bomb that might take out half a block?

Mr. FINUCANE. Yes, it would.

Senator MCMAHON. And so, reducing it to scale until you get down to pistols, and that, too, would be open to the same objection?

Mr. FINUCANE. With this exception: Any weapon necessary to single out individual offenders for crimes and to give them a trial, but anything to get a group of people——

Senator LODGE. A machine gun?

Mr. FINUCANE. For example, a machine gun, yes.

I think what Senator Tydings said the day before yesterday, to disarm down to rifles, is the desirable objective.

Senator LODGE. Do you think this country ought to be denied the right to use machine guns in a war?

WE SHOULD LEAD

Mr. FINUCANE. Eventually it ought to voluntarily renounce it.

Senator LODGE. Even though the others are going to use it?

Mr. FINUCANE. I do not think it should be denied it by another country, but I think it should voluntarily renounce these weapons down to what is necessary for a police force.

Senator MCMAHON. Regardless of what another country does?

Mr. FINUCANE. I think we should, with due prudence, and with careful measurement of the effect on the other people of our example, reduce down to the level of any weapons——

Senator LODGE. Regardless of what the other countries do?

Mr. FINUCANE. We should lead them, yes.

Senator LODGE. We ought to do it first?

Mr. FINUCANE. By example, yes. This is not the position of my organization. I state it as a personal belief. The council officially advocates disarmament by international agreement. I personally believe it can be done successfully by leadership.

Senator LODGE. It is a good thing that the rest of us do not agree with you, because you wouldn't be living very long.

Senator MCMAHON. Disarmament by example is what you believe in?

Mr. FINUCANE. I think you excluded that in your speech.

Senator MCMAHON. You may be very sure that I did.

POLICY IN OCCUPIED AREAS

Mr. FINUCANE. Will present policies be brought into conformity with this convention?

Our policies in occupied areas already seem to be in contravention of this pact before the committee.

"Economic strangulation" sounds like genocide to us. And that is exactly, quote and unquote, how Gen. Douglas MacArthur has described our occupation policy in Japan. The Cairo conference at which it was decided to strait-jacket Japan on four small islands portended an insufficiency of food and raw materials for millions of Japanese. It is working out exactly that way.

Even worse has been our treatment of Germany. The pacts made at Quebec, Yalta, and Potsdam are still the law of our land and of Germany. As executive agreements, which have never been contradicted by Congress, they gave us the Morgenthau plan, the division of Germany, and the dismantling and destruction of German industry.

Under the authority of these agreements, we are still countenancing the manufacture of a misery, the driving out of people from their homes. Here is a United Press Dispatch from the New York Times of January 15, 1950:

> DUSSELDORF, Germany, January 15 (UP).—The German Red Cross said today that Poland would probably expel 300,000 Germans from Polish-occupied Silesia this year, and appealed for funds to help "these poorest of the poor."
>
> "These 300,000 men, women and children will have only the clothes on their backs when they arrive," the Red Cross said. "They will bring no luggage, and it will be a terrible trek for these poorest of the poor, who will need not only food but all essential items of clothing."

Incidentally, the New York Times announced yesterday that the Allied High Commission in Germany had made an agreement with the Czech government in Prague under the authority of the Potsdam agreement to expel 20,000 more Germans from Czechoslovakia; so that the Potsdam agreement is still in effect, and it is still being lived up to.

All told, 12,000,000 homeless expellees will rest their heads beneath strange roofs in Germany tonight as testimony of our genocidal intent, or genocidal carelessness, at Potsdam. Twelve million homesick hearts will meet tomorrow's dawn in an alien-to-them Germany, many of them jobless, hopeless and with a lessening desire to live. This, because of the brutal expulsions policy we agreed to at Potsdam.

A Catholic publicist, Father W. V. Straaten, brings home our responsibility for the matter in the January 1950 issue of the Catholic Digest:

> By their joint action—

he writes—

> the triumvirate of Potsdam lost forever the right to point an accusing finger and condemn in others crimes against humanity and genocide. Potsdam was a mortal sin against nature.

Amputated from its food-growing areas, western Germany struggles to feed her 8,000,000 share of the expellees who have been dumped into her attics, cellars, and living rooms. But even Germany's right to earn a living by manufacture and commerce is throttled by the ceiling on her remaining industry and by the restrictions on trade, clamped on by the foreign occupiers—us!

CONVENTION INCONSISTENT WITH POTSDAM

Senator LODGE. Agreeing that Potsdam and Yalta were two tragic miscalculations, two tragic mistakes, let us agree to that, why should that be an argument against ratifying this convention?

Mr. FINUCANE. Because we then would have two treaties which would be inconsistent.

Senator LODGE. Potsdam and Yalta were not treaties.

Mr. FINUCANE. They were executive agreements which have the force of treaties until nullified by Congress.

Senator LODGE. They were not ratified by Congress.

I do not see why the ratification of this genocide convention would, if it did nullify Yalta and Potsdam, so much the better, but I do not see how it would. If you are against Yalta and Potsdam, and you think this convention would nullify Yalta and Potsdam, why aren't you for this convention?

Mr. FINUCANE. Senator, do not mistake us. We are for this convention with certain reservations to make us live up to it.

Senator LODGE. All right. Go ahead and develop your thought. You may get to it.

ECONOMIC OPPRESSION

Mr. FINUCANE. The British, French, and Russians share our guilt for Potsdam. Although the French were not parties to the executive agreement they have implemented the provisions of it. That does not exonerate us.

Dismantling continues even now.

This economic oppression translates into the following gruesome figures:

At a time—1946–47—when the infant mortality rate in New York was 27.8, the infant mortality rate in the United States zone of Berlin was 116.2. We gave a German baby just one-quarter the chance we gave an American.

Senator LODGE. Don't you think we did the best we could by getting the food into Berlin?

Mr. FINUCANE. We prevented getting the food into Berlin by the mass bombings.

Senator LODGE. You could not expect us not to bomb the Germans when the war was on.

Mr. FINUCANE. At the end of the war we refused to give the Germans the food which was available for many months and even 2 or 3 years after the war.

Senator LODGE. That isn't my question. Of course, while we were fighting the Germans we obviously were not trying to help them. That goes without saying.

But at the time of the Berlin airlift, did we not do everything we could to get the food into Berlin? If there was something we didn't try, what was it?

Mr. FINUCANE. We should have been doing it in 1946 and 1947.

Senator LODGE. I admit that terrible mistakes were made in 1945 and 1946. I admit that, and I had nothing to do with it, either. At that point I was not in that at all. Let's admit that. You and I admit that. But after we recovered from that error, didn't we, through the airlift, do everything we could to get food into Berlin?

GENOCIDE UNDER THE AMERICAN FLAG

Mr. FINUCANE. Yes; we did, Senator. We are in agreement on that. I think the point we would like to make here is that our earlier attitude toward the Germans is an example of the genocide possible under the Potsdam convention. To the extent we began running an airlift, that was an improvement.

Yes, this was genocide under the American flag. Was this intentional? We do not presume to judge. It was preventable, and it wasn't prevented. It was at least genocide by omission. The basic policies which permitted it, Quebec, Yalta, and Potsdam, have never been changed.

Still at large, still influential in our Government, the same kind of force which this baby-killing goes unmolested. What might be con-

strued as a possibly cryptic expression of it may be found as recently as January 16, 1950. In the New Republic of that date, the editors announce what they call a Program for Liberals.

Professing a laudable interest in the danger of German rearmament to start with, they wind up with a drastic solution which states that there shall be "no German heavy industry, and no German nationality."

No German nationality! How would we like to have the Germans tell us there would be no more American nationality?

Would we feel we were being "genocided"?

Senator LODGE. Who says there should be no German nationality?

Mr. FINUCANE. The editors of the New Republic.

Senator LODGE. You are not going to hold the United States Government responsible for that?

SPIRIT OF THE CONVENTION IS NOW BEING VIOLATED

Mr. FINUCANE. No; I don't think they would approve of it.

The convention which you have under consideration expressly forbids "direct and public incitement to commit genocide * * *" by "private individuals" as well as by government. Can we as a nation enter this pact against genocide without feeling that, at least in the incendiary fringes of our press, the spirit of the pact is already being violated?

Or, if we wanted to bring the press into conformity with the spirit, have we considered the curtailment of freedom of expression which that would entail? Would the convention here override the Bill of Rights? Would this in effect be a "sneak" amendment to the Constitution?

This is just one of the problems. What could happen to the country's professional anti-Germans and anti-Semites?

For the sake of the successful application of the convention, we think these apparent flaws should be worked out.

Again we feel that, for its own future effectiveness, it should not merely be allowed to become window dressing for our national failure as postwar judges. For example, it is possible that some of the legal philosophers and lawyers who fostered the London charter for the war crimes trials view ratification of this convention as an opportunity to rehabilitate a rather shoddy theory and practice which is being repudiated by a growing number of historians, and by history itself. In all the wars since 1945—Palestine, Indochina, Indonesia, Indo-Pakistan—the Nuremburg trials have not received the compliment of a single imitation.

There is certain evidence in writing that this legal group may see the Convention on Genocide as their chance to win the official stamp of postwar approbation which reluctant reason withholds. We might mention the name of Rafael Lemkin, former adviser on foreign affairs to the United States War Department. He was closely connected with the Nuremburg trials, and is the founder of the world movement to outlaw genocide.

I understand, on Mr. Lemkin's behalf that his endorsement of the Nuremburg trials made this distinction. He advocated trial of the Germans for crimes agains humanity and war crimes, but did not favor the punishment for crimes against the peace, as they are called.

We might mention the name of Telford Taylor, former brigadier general and former chief of counsel for war crimes at Nuremburg. General Taylor shows his hand plainly:

> Should the Senate refuse to ratify the Genocide Convention, it is certain that the Germans will conclude that America is unwilling to subject her own citizens to the same law that was applied, under American stimulus, to Germans and Japanese at Nuremburg, Tokyo and elsewhere.

This, too, is from a recent issue of the New Republic.

It would be flattering to its architects to have the unique, Nuremburg-style law codified, as it were, and made a part of the permanent body of international law. Except for two things. The Nuremburg trials were one-sided. We might someday have to stand in the prisoners' dock.

RESPONSIBILITY FOR MASS BOMBINGS

Senator LODGE. You don't put General Eisenhower in the same category with General Goering, do you?

Mr. FINUCANE. Technically, they were both in charge of an air force that conducted mass bombing. I suppose if the Germans had won and used the same principles we used, we might have been tried in the same way.

Senator LODGE. Goering had a lot of other attributes that Eisenhower did not have at all. Goering had a number of civil functions.

Mr. FINUCANE. Did he? I didn't know about that.

Senator LODGE. I am surprised you didn't. It was in all the papers.

TRIAL AFTER FUTURE WARS

Mr. FINUCANE. What then? Is Eisenhower prepared to stand judgment in Goering's shoes? Is General Spaatz prepared to explain the canons of hydrogen law to a Russian-constituted international military tribunal?

Remember, the Russians, or any other captor for that matter, would only be carrying out the treaty provisions of this convention, as it could be interpreted, in judging us.

If I may interrupt myself at this point, it may be said that the Russians could not apply this law to us. In fact, I think both of you Senators alluded to this in questioning a former witness. Article VI says that the prosecutions would be conducted in one's own nation, or by a court of international penal jurisdiction when it is set up. But article VIII says that it could be conducted by an appropriate organ of the United Nations.

Senator LODGE. Oh well, now wait a minute. Not acting as a court.

Mr. FINUCANE. It does not say they would be acting as a court, but it does not limit them.

Senator LODGE. It limits them to actions authorized by the Charter of the United Nations.

Mr. FINUCANE. That is right, which could cover anything, apparently including the Security Council, which would be——

Senator LODGE. Would you tell me where in the Charter of the United Nations you find any power to sentence a man to jail or impose any kind of criminal penalty on him?

Mr. FINUCANE. It is not in the United Nations Charter.

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Senator LODGE. There you are. That is why I don't think your argument is good so far as article VIII is concerned.

Mr. FINUCANE. However, the members of the United Nations are able to interpret the Charter to mean what they say, and to take action which deals with things which weren't contemplated at the time the Charter was written.

Senator LODGE. They are?

Mr. FINUCANE. Yes. For example, at the time the Charter was written it was not thought there would ever be the problem of the blockade of Berlin; yet the Assembly in Paris was able to deal with that problem when it arose, and it is our opinion that someone who wanted to prosecute under this convention, who couldn't find a channel through which to prosecute in a national court, could go to an appropriate agency of the United Nations and ask for action there.

Senator LODGE. What particular words in the Charter would they then twist? They would have to be some pretty good twisters to twist anything in the United Nations Charter for an authority to impose criminal penalties on an individual.

Mr. FINUCANE. Assuming that the Russians had an automatic majority of the sort that we have now, I assume that they could present an appropriate resolution to one of the organs of the United Nations with the appropriate words in it and get action on it, and if the United States tried to refuse to conform with the desired action, we would be fighting the United Nations.

Senator LODGE. It is obvious that the Soviets have a whole battery of guardhouse lawyers, and they can twist words to mean almost anything, and I don't doubt that if they had control of the United Nations they would do all sorts of farfetched things, but even then I don't see what language in the United Nations Charter could be twisted, even by the most inveterate and determined twister, to authorize the imposition of a criminal penalty.

Mr. FINUCANE. I can't pick out any specific language.

Senator LODGE. I think that argument is fantastic, Mr. Finucane. I think it is just fantastic. I am open-minded. If there are some good arguments, I would like to hear them, but I think that is fantastic.

ARTICLE VIII AN OPENING

Mr. FINUCANE. I think that article VIII suggests the possibility of someone in the future seeking action through the United Nations.

Senator LODGE. We have people coming up here to Congress seeking all sorts of things. That doesn't mean they get them.

Mr. FINUCANE. I would like to remind the Senator that once this idea of international action is approved, as it would be in this convention through article VIII, it might be implemented through the type of international action which we took in constituting the Nuremberg trials.

Nor can we hope to rely for immunity from this predicament on our infallible victories. We win all our wars. But we lose many a battle. And we lose plenty of personnel who could be put on trial by the enemy.

A downed American flier, captured in enemy territory, would have to explain why the H-bombs he dropped weren't genocidal. The Rus-

sians, for example, might wave this document, which you have before you, right in his face, and say, "Here it is."

If they had Senator Lodge there to defend the accused soldier, and prove to the Russians it was not genocidal, or Senator McMahon, the soldier might have a chance.

Senator LODGE. I doubt that. I am not a lawyer, but even if I were a lawyer I doubt if I could get off any American military man that the Russians wanted to kill. That just shows where you and I differ. You have this faith in words and argument, and I haven't when it comes to the Soviets. I think what they can do they will do, and what they can't do they won't do, and words aren't going to matter much.

Mr. FINUCANE. That is why I think we ought to set them an example.

Senator LODGE. By disarming all along, and letting them come over here and overwhelm us?

Mr. FINUCANE. You have overstated my case a little bit, sir.

Senator LODGE. I don't want to do that.

CONVENTION ALONE CANNOT STOP THE POWER-MAD

Mr. FINUCANE. This document will not in itself stop the power-mad or insensitive in this country or in any other from killing people singly or in mass to gain their ends. What could this convention have done to Hitler?

Would it have saved the Jews? Not likely. Rather, Hitler might have exploited it to persecute the Jews, because he charged the Jews were plotting to destroy the German nation. He undoubtedly would have used it to add the aura of treaty enforcement to his occupation of the Sudetenland for the protection of the Sudeten Germans.

Each nation, pending establishment of a court of international penal jurisdiction, would punish its own violators of the convention, the convention provides. Who in Germany could punish Hitler? Who can command the king?

In other words, in the only likely international courts, we would risk Nuremberg justice; and in the national courts we would run into nullification, when the only cases for which an international treaty would be necessary came to the bar.

DIFFERENCE BETWEEN LARGE POWERS AND SMALL STATES

This is not arrived at merely by a theoretical analysis of the article you have before you. Take an article by Rafael Lemkin in which he interprets this convention in the Foreign Policy Association's publication. He says:

> So far as the United States is concerned, the question of genocide is purely academic, for genocide does not happen here and is not likely to happen.

Then you get into the question of whom is it going to be applied to? Is it going to be applied to Russia? He says:

> Genocide may be committed not only by great powers, but also by small states. In the latter case, enforcement would prove easier than in the case of the great powers.

I do not want to take liberties in interpreting what he wrote here, but it seems to me that he bases the applicability of this convention on the relative power status of the signing parties.

No convention is needed to have states prosecute this kind of crime now, if they want to. No convention is any good if they don't want to, or if the sovereign is the alleged offender. Unless, that is, one country wishes to enforce it upon another by war. Or unless, as we repeat and suggest, each country show its sincerity by living up to the convention itself.

These are a few of the problems and inconsistencies which the National Council for Prevention of War would like to see solved and eliminated by this committee or fully discussed in the coming debate on this convention, after it is reported by the Foreign Relations Committee.

SUGGESTED UNDERSTANDINGS

We suggest also that the convention be reported with the following understandings:

1. That our present treaties, practices, and projects, to the extent that they conflict with the principles of this convention, be brought into conformity, and that, specifically:

(*a*) We proclaim to all the world that we will cease to manufacture or plan to manufacture the hydrogen bomb, and that we will seek the eventual elimination from our national armory of all other present or projected weapons of mass destruction; that——

Senator LODGE. And that includes everything down to the machine gun?

Mr. FINUCANE. Anything beyond what would be used in the enforcement of civil and criminal law; yes, Senator.

An added understanding that should be added to the convention is that we seek to obtain the revision of, or denounce, those treaties to which we are a partner, under which mass expulsions of human beings are still being carried out; that

(1) Exclusion of German expellees from the care, concern, and assistance of international organizations be ended; that

(2) Restitution of land, property, or equivalent damages be made or paid to the survivors of the expulsion; that

(3) Support be given to the return of these people by peaceful means to the land and birthrights from which they were driven; and that

(4) Generous opportunity be given some to emigrate to the United States.

2. That the endorsement of this convention does not imply an endorsement of the one-sided victors' justice dispensed at the Nuremberg trials, and that the invoking of this convention by the victor in a war, as authority for bringing to trial the conquered, is specifically excluded.

3. That this convention shall not be held to nullify any phrase of our Constitution.

To reject this convention would be to dash the hopes of many fair-minded and hopeful workers for a better, safer world; to accept it without making the adjustments recommended above would brand us as hypocrites and political mountebanks.

In summary, we are for this convention 100 percent. The only way we want to improve it is to add conditions that will put it to work right away, and to take it for what it means.

If virtue is good it's good now; it's all good, and as good for us as the other fellow.

Senator McMAHON. Thank you very much.

Mr. Lev E. Dobriansky, representing the Ukrainian Congress Committee of America, a proponent.

STATEMENT OF LEV E. DOBRIANSKY, PRESIDENT, UKRAINIAN CONGRESS COMMITTEE OF AMERICA

Mr. DOBRIANSKY. My name is Lev E. Dobriansky. I am a member of the faculty of Georgetown University and president of the Ukrainian Congress Committee of America.

As president of the Ukrainian Congress Committee of America, which represents over one and a half million Americans of Ukrainian descent, I should like to express our heartfelt appreciation for this opportunity to demonstrate the necessity for the ratification of the genocide convention by the Senate of the United States. We Americans of Ukrainian descent, by virtue of our close kinship with over 40,000,000 Ukrainians in the Soviet Union, strongly urge this necessary step in world leadership chiefly because we can truthfully declare that through their concrete experiences we have felt the full impact of the brutal meaning of genocide. In truth, we have waited 20 years to be given this sort of opportunity to present the case of systematic Soviet genocide of the Ukrainian nation, which, I might add, bears a crucial and vital relationship to the moral and physical security of our country.

CONVENTION WOULD NOT PREVENT USSR GENOCIDE

Senator LODGE. Do you think this Genocide Convention would be helpful in preventing the Soviets from continuing to commit genocide on the Ukrainians?

Mr. DOBRIANSKY. Only by the grading. It may tend to moderate Soviet genocidal practices, in the sense that with world opinion focused on the Soviets and their genocide practices, they may tend to have it a little more secretive and a little more difficult, but I am not obtuse to assume that the genocide treaty as such would eliminate Soviet genocides.

Senator LODGE. Do you think it would be helpful, a step in the right direction?

Mr. DOBRIANSKY. It would be a step in the right direction, in the initial phase, from a psychological point of view more than for a strictly physical point.

Senator McMAHON. That is the only place in the world that it is being permitted today; isn't it?

Mr. DOBRIANSKY. So far as I know, yes, sir; and on a huge scale, as I should like to show here.

Senator McMAHON. And it is true that directly there is nothing in this treaty that reaches that genocide in the Soviet Union.

Mr. DOBRIANSKY. In the sense of eliminating it physically; no.

Senator McMAHON. You cannot reach them, except morally.

Mr. DOBRIANSKY. That is a very powerful force.

Senator McMAHON. I agree with that, but there is nothing in this treaty that makes it possible to punish them.

The Soviets signed this treaty.
Mr. DOBRIANSKY. That is right.
I would agree with you, sir.

SOVIETS SIGN AND VIOLATE

Senator LODGE. You say the Soviets signed it, and then go ahead and violate it every day?
Senator MCMAHON. Yes.

CONVENTION APPLIES TO ALL BEHIND THE IRON CURTAIN

Mr. DOBRIANSKY. In truth, sharply contrary to the fallacious overall contention of the representatives of the American Bar Association, this convention applies unquestionably to the peoples behind the iron curtain, and most powerfully to the people constituting the Ukrainian Nation. Every word in it is written in their blood and tears and sufferings that still surpass the comfortable comprehension of most Americans.

It is certainly not my aim here to dwell on moral platitudes, sentimental and lofty generalities, or legalistic abstractions which, such as have been advanced in these hearings, reek with the fallacy of misplaced concreteness. No, my consuming purpose is to direct your thoughtful attention to the array of cold, concrete facts and evidence in the case, so that the essential meaning of genocide, as it applies notably to a nation, will be rendered crystal clear. As every student of logic knows, abstractions, whether legal or otherwise, are misleading and can become extremely dangerous if they are not properly related to the concrete situations which form their empirical foundation. After having intently listened to and carefully examined the paramount objections raised by the well-intentioned leaders of the American Bar Association, I firmly maintain that, as concerns the perpetration of national genocide, they manifest an unfortunate lack of knowledge of contemporary history, particularly as regards eastern Europe, and are, in effect, the prisoners of their own limited set of abstractions. They are, as a result, inadvertently contributing to the tragic circumstance of failing to clothe the facts with the suit of law.

A. PROMINENT POINTS OF CONSIDERATION ON SOVIET GENOCIDE

In dispelling the confusion that pervades the minds of these ABA representatives and others, I should like to emphasize first the prominent points of consideration on Soviet genocide as practiced on the Ukrainian Nation:

(1) Without diminishing in any way the great significance of other similar testimonies, the outstanding fact is that, in the systematic annihilation of a nation in select part and therefore as such, the case of the Ukrainian people is classic in the contemporary period. Of the enslaved European nations, it has had the earliest, longest, and broadest experience with Soviet genocide which in terms of magnitude and extent far exceeds what the Nazis diabolically produced. Referring to the institutionalized receptacles of mass deportation and national liquidation, Dr. Julius Margolin, a pre-

eminent Polish Zionist leader, offers the illuminating testimony in the authoritative work of David J. Dallin on Forced Labor in Soviet Russia that—

The Soviet camps have swallowed more people, have exacted more victims, than all other camps—Hitler's and others—

Might I interject, that comes from the lips of a liberal Jew.

Since the Bolshevist rape and extinction of the independent Ukrainian Republic in 1920 and the forcible incorporation of its largest territory into the Soviet Union in 1924—20 years before the Baltic peoples were subjected to a similar fact—the Ukrainian people have painfully understood the macabre meaning of genocide under blood-stenched Soviet auspices.

(2) The systematic practice of national genocide is an indispensable and integral part of Soviet political strategy as oriented toward the all-important objective of world domination. As everything else in dialectical Communist thought, genocide has its ideological basis. It constitutes the very core of the philosophy of calculated terrorism as laid down by Lenin and followed religiously by his parrotic successor. Its thoroughgoing aspect may be best appreciated by reflecting over these axiomatic words of the master:

Three-quarters of mankind may die, provided the remaining one-quarter become Communists.

I repeat, similar in substance to the ulterior motives of native Communists in their campaign even for a babies' milk fund, every act of the Kremlin is political in nature, and this of dialectical necessity conspicuously applies to its methodical destruction of nations in select part and as such.

(3) The integral character of Soviet genocide, as it applies to national entities, is further borne out by the fact that there is in existence no alternative basis of explanation in the form of anti-Communist political parties or counterrevolutionary agencies in the Soviet Union. The problem is definitely not one of any counterrevolutionary opposition.

COUNTERREVOLUTIONARY TACTICS DURING WORLD WAR II

Senator McMAHON. Do you think that you stand entirely accurate in that? Don't you think there are groups there that get shipped occasionally because they have been found to be not taking the whole thing entirely lying down.

Mr. DOBRIANSKY. I would say this, Senator, that you have individuals that may be counterrevolutionary, but there are no organized groups, and I speak at least from the point of view of the Ukraine. What happens in the other areas, I am not speaking for them at all.

Senator McMAHON. You are sure that is the situation in the Ukraine?

Mr. DOBRIANSKY. With respect to the Ukraine. I will give adequate illustration of that as I present this testimony, as you will see.

Senator McMAHON. Of course, we have in mind that when the Germans invaded, the Ukrainians pretty much went over to the Germans, and seemed to be glad to get a chance to get away from the Moscow Government.

Mr. DOBRIANSKY. But not to be embraced by the Germans.

Senator McMAHON. Then the Germans, of course, brutalized them, and word went back that as between the two there was little choice, so they went back to the Moscow domination and they fought then, did they not, most of them, on the Soviet side?

Mr. DOBRIANSKY. You mean for the Soviets against the Germans? That is not entirely true. There may have been some that did that, but the leadership, you see, that deserted the Soviets for the Germans, went underground, and you had a situation there from 1943 right down to the present day where the leadership has formed the very skeleton of the Ukrainian insurgent army, fighting both the Soviets and the Germans.

Senator McMAHON. Do you believe that most of that group has been exterminated?

Mr. DOBRIANSKY. No, sir. They are still operating, from latest information that I have been able to receive.

Senator McMAHON. They are still operating?

Mr. DOBRIANSKY. Yes, although you have quite a number, of course, that from day to day are filtering into the American zone in Germany, and also into the zone in Austria.

Senator McMAHON. Do you mean in the Ukraine they are carrying on a harassment operation on them?

Mr. DOBRIANSKY. That is right, sporadic in nature to be sure, but you have had that right along, and down to this day.

Senator McMAHON. Of course, being the devil's advocate, as it were, if that is going on, they would think they would have a right in maintaining the sovereignty of their state to take these people who were attempting to harass them and treat them as political prisoners.

Mr. DOBRIANSKY. Well, yes. As you know, the Communists are adept in nominal——

Senator McMAHON. Don't misunderstand me. I wish there were a host of them that would rise up.

NO QUESTION OF PARTICIPATION IN SOVIET IDEOLOGICAL DIFFERENCES

Mr. DOBRIANSKY. You cannot construe that, I say, as for example many of the American Bar Association representatives try to convey, that these are political parties on the line, let us say, of Trotzkyists. These are Ukrainian nationalists, and I use "nationalists" in a moderate sense, not chauvinists, who see definite Soviet genocide of the Ukraine Nation and are attempting in every possible way to undermine that practice by the Soviets and undermine, of course, the Soviet foundation itself.

Senator McMAHON. Of course I suppose the Soviet argument against that would be, "Well, we are exterminating, putting in jail, or in concentration camps, the Ukrainians because they are making war against the state, secret guerrilla warfare."

The Ukrainians would say, "We are harassing them because they are trying to exterminate the Ukrainians as a people."

Mr. DOBRIANSKY. Precisely.

Senator McMAHON. Do you see?

Mr. DOBRIANSKY. Yes. And not only that, of course, the fact that the Ukraine has been subverted. It lost its independence in the same way that the Baltic countries have recently and in the same way that you have your satellite countries.

Senator McMAHON. And as a proud people they are not taking it lying down.

Mr. DOBRIANSKY. That is right, in the same way that the Irish didn't take it lying down from the English.

Senator McMAHON. Touché!

UKRAINE CULTURALLY DIFFERENT FROM U. S. S. R.

Mr. DOBRIANSKY. Instead, it is conclusively one of a rapid consolidation of an empire consisting of nations, which, like Ukraine, culturally belong to western society and thus do not fit into the pattern of Communist Russian dominance. To think otherwise, as the ABA representatives were given to do, and, significantly enough, as the Soviet propaganda machine for a long time has goaded us into thinking, stands in brusque defiance of certain indisputable evidence.

Since 1920–23, when they were thoroughly liquidated, there have been no anti-Communist parties nor counterrevolutionary agencies in Ukraine. Instead, there have been, as now in the form of the efficient Ukrainian Insurgent Army, which the Kremlin presently classifies as a "bandit force," outbursts of spirited resurgence against the planned attacks on the Ukrainian national itself is intrinsically anti-Communist because it has never surrendered spiritually to the prime objective of the Kremlin to create the Soviet Nation (Sovietsky Narod) and its Soviet man, speaking only the Russian language, thinking only in terms of nonbourgeois Soviet concepts, and taught to forget his non-Russian cultural tradition, his language, his history, his church, his art and customs—all the sensitive fibers that sustain the life and reality of a national group, that preserve a nation as a nation. The greatest myth exported abroad by the Soviet government, for which, I am sorry to say, most American intellectuals have fallen hook, line, and sinker, is its supposed peaceable solution of the nationalities problem. Behind a facade of nominal representation, a technique analogously employed by our native Communists in their front organizations, the Soviet government is in truth solving this problem—by exterminating the Ukrainian and other subjugated non-Russian nations in select part and therefore as such. And under the convention, the reasons motivating this genocide are immaterial.

U. S. S. R. AND SOVIET AMBITIONS ALIKE

(4) The intrinsic nature of genocidal activity in terroristic Soviet world politics is further reinforced by the striking compatibility existing between traditional imperialistic Russianism and Russian Soviet communism concerning the effective recognition of conquered nations. The established policy of Russification under the Czars is well known to original scholars on Russian history, and the forcible propagation of the "Great and Mother Russia" idea by Russian bureaucracy, scholarship, and police reached its summit of expression in 1863 when, with reference to the Ukrainian nation, the Minister of the Interior, Valuyev, banned the use of the Ukrainian language with his famous declaration that "there never was, is not, and never will be a Ukrainian language." This barbaric mentality has been carried over into the Soviet phase of Russian history, and, supported by the brute execution of genocidal techniques, it is wholly congruous

with the Soviet program in the real extinction of subsumed nations for the creation of the Soviet nation, under the dictatorial rule, of course, of the Kremlin. More and more Americans are coming to understand this nexus between Russification and world communism. Significantly, it is one of the major themes of Lt. Gen. Walter Bedell Smith's current work on My Three Years in Moscow. As he aptly puts it, "considering Soviet objectives and intentions, communism today is great Russianism." It is this monstrous exigency that has precipitated in the main the phenomenon of Titoism today, as it prevailed unnoticed and powerless in Ukraine from 1928 to 1933. Russification and Soviet genocide are clearly founded on a common ground—the liquidation of non-Russian nations in select part and therefore as such.

DESTRUCTION OF THE SELECT PART OF THE NATION

(5) The particular case of the Ukrainian nation places in bold relief the essential significance of the meaning of destroying a nation in select part and therefore as such. In contrast to the relatively small populaces of the Baltic nations, which by virtue of this fact face the real possibility of being completely obliterated physically, the large population in Ukraine presents obvious difficulties for the extermination of all of it in short historical time. Yet despite this, the Ukrainian nation is being destroyed as such through the thorough excision of its select and determining parts.

I should like to continue, if I may, sir, with the genocidal art, to show the manner in which it is being systematically applied.

In pronounced like manner that expansive Russianism under the czars is historically continuous in the territorial extension of Russian Soviet communism, the many instances of genocidal practice of the former also serve as indisputable precedents establishing a line of continuity leading to contemporary Soviet genocide. Extremely naive is the thought that a nation can transform itself overnight by simply passing through a revolution. The genuinely great leaders of the Russian nation recognized this fully, and with wisdom and prophetic insight, feared this very continuity of genocidal activity in Russian world politics. As one of these few, M. Gorky warned as follows:

> The revolution has overthrown the monarchy. But perhaps it has only forced the external malady deeper into the organism. Evidently killing is easier than persuasion and this very simple method is very easy for people who have been brought up amongst massacres and educated by massacres. All you Russians are still savages, corrupted by your former masters, you in whom they infused their terrible defects and their insane despotism.

Admittedly, it is difficult for democratic Americans to comprehend the ghoulish import of this truth, most of them being acquainted with only the brief episode of Nazi race murder, but for what may well lie ahead of us, it is surely high time that we began to peruse the long record in which this truth is firmly implanted.

CZARIST MASS MURDERS

When Gorky, with unexcelled intellectual integrity, wrote the above statement, he no doubt bore in mind, among many others, these following examples of Muscovite mass murder as perpetrated by the czars:

(1) the absolute decimation of the Novgorodian nation, the fourth eastern Slavic nation in early medieval times, which capitulated to the earliest expansion of Muscovy—its populace murdered, drowned, or deported to the environs of Moscow;

(2) the mass murderous exploits of the famous Oprichnina of Ivan the Terrible, a prototype of Hitler's SS organization;

(3) the ghastly order of Peter I resulting in the slaying of the entire population, including women and children, of Baturyn, the capital of the Ukrainian Hetman, Ivan Mazepa;

(4) the banishment and drowning of 10,000 Crimean Tartars in the Black Sea at the despotic command of Catherine II;

(5) the merciless extermination of national Polish leaders and of Ukrainian Catholics in the Kholmland by Nicholas I and his field marshal, Suvorov; and, naturally,

(6) the series of Jewish pogroms staining further the pages of imperialistic Russian history need scarcely be cited in detail.

SOVIET GLORIFICATION OF IVAN THE TERRIBLE AND PETER I

It is of particular significance that the Russian Communist Party, soon after the establishment of its dictatorship, ordered the popular glorification of such wanton genocidists as Ivan the Terrible and Peter I, and in this part war Stalin appropriately crowned this Genghis Khan tradition by decreeing the Suvorov decoration as the highest military award.

But in this heinous matter of genocide, as indeed in other things, the former czars had nothing over the present Red Czar of a still larger Russian Empire. For, as again our former ambassador to Moscow, Lt. Gen. W. B. Smith, was quick to learn, we are dealing with—

> intelligent, disciplined, dedicated leaders of the party, with an ability and efficiency that were completely unknown to the corrupt and venal czarist regimes, which preceded them.

The Russian Communists lost no time in utilizing genocide as an efficient instrument in their political strategy of conquest over non-Russian territories. Let us examine the record of the national victims of Soviet genocide, so that we may clearly understand that the Soviet Union is the burial ground of nations and not merely a slave confinement. Taking in order first those that have been totally or nearly so obliterated and those that are rapidly approaching this fate:

CATALOG OF SOVIET EXTERMINATIONS

(1) The Ingerian nation, which consisted of 400,000 highly civilized people of Scandinavian culture and who inhabited Ingermanland, was completely wiped out in 1921–23, accommodating thereby the Russification of this hinterland of Leningrad;

(2) The Don and Kuban Cossack nations, people who considered themselves separate national groups and aspired to independence, were annihilated between 1928 and 1930;

(3) The Greek population of the climatically warm Kerch Peninsula, an ethnic group of some 8,000 people, were deported to a forced labor camp in the insufferably cold Arctic in order to allow the Russification of this strategically important region;

(4) The Volga German Republic was abolished in 1940 and a population of approximately 800,000 was deported permanently to the Arctic area;

(5) The Crimean Tartar Republic was erased from the map in 1944, with some 700,000 improperly clothed humans likewise cattled to the Asiatic Arctic, most of them having died along the route from climatic exposure;

(6) The Chechen-Ingush Republic of the Caucasus met a similar fate in 1945 and a deportation of 600,000 to Asia ensued;

(7) The "autonomous region" of Karachev was liquidated in 1945 and its population ruthlessly scattered; and

(8) The Baltic nations of Lithuania, Latvia, and Estonia, for whom there are able and free spokesmen with substanial evidence certifying to current Soviet genocide, may by virtue of their relatively small populations end in complete extinction. However, they are still in the stage of genocide where the destruction of a nation in select part and therefore as such is achieved. And the concrete pattern of this phase stands out brilliantly in the long experience suffered by the Ukrainian nation.

What the non-Russian nations in the Soviet Union have been and are experiencing, what those in the Soviet political orbit are now beginning to experience, and what others, like China, have in immediate prospect, relative to the destruction of a nation in select part and therefore as such, is best portrayed by the application of Soviet genocide to the Ukrainian nation. Indeed, the methodical steps in this application demonstrate the cold logic that has been developed in the art of Soviet genocide, and bluntly explain the recurring pattern of genocidal activity in all countries submerged by the Soviets. It is through this process that the Russians will emerge as the most powerful ethnic group in both Europe and Asia.

SYSTEMATIC STEPS OF SOVIET GENOCIDE

Let us therefore observe these systematic steps of Soviet genocide in its application to the Ukrainian nation:

INITIAL ATTACK

(1) The initial attack is directed against the cerebrum of the national organism, against its intelligentsia, its guiding leaders, and brilliant personalities: in short, a deadening mass blow on the head of a nation so to paralyze its entire body. In the years of 1920, 1926, 1930–33, this attack was undertaken by the Kremlin to destroy the mental fibers of the Ukrainian nation. Eastern Ukrainian intellectuals were liquidated or deported to certain death in Siberia en masse. In 1931 alone, 51,712 Ukrainian intellectuals were deported to Siberia. Even leading Ukrainian Communists, as Panas Lubchenko, a Prime Minister of Soviet Ukraine, Mykola Skrypnyk, Minister of Education and an old friend of Lenin, Chubar, Shumsky, Khvylovy, and scores of others were murdered or committed suicide to protest Moscow's policy of national genocide. When the Soviets occupied Western Ukraine in 1939, then part of Poland, this initial step was repeated. It is most significant that the political and intellectual leadership in Ukraine today is conspicuously Russian. I wish to offer this manageable, detailed report of these outrages and the most prominent intellectuals affected.

I have here detailed evidence on genocide in the Ukraine. I have it divided into sections, one section dealing with this particular phase of the extermination of intellectuals. All the names, as many as we could include in this brief report, are included here.

Senator McMAHON. It will be made a part of the record here.

(The matter referred to is as follows:)

EVIDENCE OF GENOCIDE IN THE UKRAINE

[Excerpt from the Ukrainian Quarterly, vol. IV, No. 4, autumn 1948, pp. 325–338]

SOVIET GENOCIDE OF THE UKRAINIAN NATION, 1920–39

Points of evidence

1. Significant populational changes.
2. Extermination by planned famine.
3. Mass murder in compulsory labor camps.
4. Planned racial changes in Ukraine.

"The most precious of all the treasures of the world is the human being."—Stalin.

During the celebration of the thirtieth anniversary of the existence of "the dictatorship of the proletariat" special praise was given to the gigantic "achievements" of the Ukrainian Socialist Soviet Republic in all branches of the social, national, and cultural program, and to the "happy" and "joyful" life of the Ukrainian people.

We shall discuss the Soviet "achievements" only in regard to the changes that have taken place in the population of the Ukrainian Socialist Soviet Republic and show what has become there of "the most precious treasure," that is, of the human being. The government policy in regard to the treatment of its people is important under all conditions, because it is of direct concern to man, and especially in the Soviet Union where it is integrally connected with its national policy. This policy entirely based upon the requirements of the building up of "socialism," that is, the requirements for safeguarding and extending the Communist regime. In other words, all the affairs of the Ukrainians as a national, cultural, and religious entity are entirely subservient to the affairs of the totalitarian state.

Under the Soviet rule all the quantative and qualitative processes that take place within the population are foreseen in the planning program. The destruction of people by famine or by killing, by legal procedure or without it, by immigration or emigration, by Russification and denationalization—all these methods are included in the plans of the Soviet policy on the population problem, since this is an integral part of the Soviet national policy.

Our knowledge of the quantitative and qualitative changes in the population of Ukraine is based on the census reports of 1897, 1926, and 1939, and similar other official Soviet sources. Only in some special instances do we make use of our computations.[1]

The general change in the population of the U. S. S. R. and Ukraine for the period 1897–1939 can be seen in the following table (numbers denoting millions of people):

Countries	Year			
	1897	1913	1926	1939
	Millions	*Millions*	*Millions*	*Millions*
U. S. S. R.	106.4	139.3	117.0	170.5
Ukraine	20.5	27.0	29.0	31.0
	Percent	*Percent*	*Percent*	*Percent*
Ukraine's percent	19.3	19.4	19.7	18.2

[1] This testimony discusses matters relative to the Ukraine included within the boundaries of the Ukrainian S. S. R. of 1939, that is excluding western Ukraine and Carpatho-Ukraine, which were finally incorporated within the Ukrainian S. S. R. in 1945.

During the 16 years, from 1897 to 1913, the population of Ukraine increased from 20,500,000 to 27,000,000, that is, by 6,500,000, and during the next 26 years, from 1913 to 1939, it increased only by 4,000,000. During the period from 1926 to 1939, when the population of the entire USSR increased by 23,500,000, the population of Ukraine increased only by 2,000,000. Accordingly the precentage of the population of Ukraine also fell in 1939, in comparison with 1926, from 19.7 to 18.2 percent, that is, by 1.5 percent. Why? What happened to the population of Ukraine between 1913 and 1939? How can we explain such a failure to increase proportionally?

We can see much better what kind of numerical change took place in the population of Ukraine for the period of the three census listings from the following table:

Periods	Total increase of population in millions	Annual increase in thousands	Annual increase of population in—	
			U. S. S. R.	Ukraine
			Percent	*Percent*
1897 to 1913	6.5	433	1.93	1.98
1913 to 1926	2.0	154	.59	.57
1926 to 1939	2.0	166	1.23	.53

That is, the total annual increase of the population in Ukraine fell from 433,000 (for the period of 1897-1913) to 166,000 during the period of 1926–39. Accordingly the annual increase of population in percentage fell from 1.98 percent to 0.53 percent, that is, the rate decreased by 3.6 times.

At first glance the above statement seems hard to understand, especially when we take into consideration the fact that Ukraine occupied the foremost place in regard to its natural increase of population just before the First World War, not only in Europe, but in the whole world. Its yearly increase in population varied between 1.8 and 2.0 percent. After the First World War and the civil war the natural increase of population became even greater. During the period 1924–27 its yearly average was 2.36 percent. In other words, this kind of natural increase insures the doubling of the population within the space of one generation. Such a high tempo in the increase of the population shows that the Ukrainians are still living a highly moral life, and are healthy and full of vitality.

The low annual increase in population in 1913–26, both in Ukraine and the U. S. S. R., which varied between 0.57 and 0.59 percent, was due to war and the revolutionary conditions. Fronm 1914 to 1921 there was war, at first the First World War, later the civil war. The latter especially deeply touched Ukraine, not only because the civil war was mainly waged on Ukrainian territory, but also because the great famine of 1921–22 raged with its worst fury in Ukraine, where it killed off 2,000,000 people. In fact, during the period of war and the revolution (from 1914 to 1921) the natural increase of population in Ukraine almost ceased. At the end of 1920 the population of Ukraine, in comparison with 1913, showed no change. It was still about 27,000,000.

But how can we explain the slowness in the increase of the population in Ukraine in 1926–39? In comparison with the annual increase of population in the whole U. S. S. R., it was 2.3 times smaller. In place of the 1.23 percent increase in the whole U. S. S. R. there was only 0.53 percent increase in Ukraine. We should point out that this annual increase in population in the U. S. S. R. is really its natural increase, as there are no migrational movements between the U. S. S. R. and the rest of the world, if we leave out those Soviet diplomats and officials who refuse to return home, and in effect migrate thus from the U. S. S. R. The situation is different in this respect in Ukraine. In Ukraine, as we shall see further on, the increase in population from 1926 to 1939 can be accounted for, not by the natural increase, but the inflow of foreign elements.

The special feature of the population policy of the Soviets is the fact, in order to achieve its ends, in the interest of the dominant nation, that is, of the Russians, it does not hestitate even to eradicate some peoples altogether. We have witnessed this ruthless policy applied to the German Republics of the Volga, and to the republics of the Crimean Tatars, of the Chechen-Ingush people, and of the Kabardin-Balkarians, and so forth, the population of which was deported either to Siberia or to the north to face certain death. The Soviets are applying the same kind of policy to Ukraine.

The extermination of Ukrainians by famine

The ominously low increase of the population in the Ukrainian Socialist Soviet Republic for the period of 1926–39, amounting only to 0.53 percent, can be adequately explained primarily by the deliberately planned mass famine. As we know, the Ukrainian peasants had no desire to join the collective farms, for they refused to have the fruits of their labor looted by the State. They actively opposel the process of collectivization. The Soviets decided then to break their opposition and to force the peasants to join the collective farms, even if they had to use the most brutal means. By such means a terrible famine was created in Ukraine in 1932–33.

It is necessary to bear clearly in mind that there was nothing ominous in the weather conditions in 1932. True, the harvest of that year amounted only to 14,400,000 tons of grain, in comparison with the average annual crop of 17,700,000 tons of grain in the previous years. That crop was sufficient to feed the people and the livestock of Ukraine, without causing any lack of food at all. But it was necessary for the Soviets to have a famine. So they caused it deliberately, by making the peasants yield unusually heavy tax allotments in grain to the State.

Even before the last tax allotments in grain had been delivered, the famine of 1932–33 already began its grim work in Ukraine. Its extent and the huge number of deaths due to actual starvation were without any precedent. In many villages the people were entirely wiped out by the famine. Crowds of starved peasants burst into cities, in search of food, and dropped dead along the streets in thousands. The country roads, deprived of the usual traffic, were overgrown with weeds. It was dangerous for anyone to walk alone or in twos, as there were frequent cases of robbery and even of cannibalism * * * It is recorded that in some cases the local authorities would keep the corpses unburied until they started to decompose in order to prevent the hungry people from digging them up from the graves and eating them * * *

This is what Malcolm Magridge, an Englishman, wrote in the May 1933 issue of The Fortnightly Revue: "During my recent visit to Ukraine I had a glimpse of the fight that is waged by the Soviet Government against the peasants. The battleground is all littered up with ruin, as in a real war. The work of destruction goes on. On one side of it there are millions of peasants with hunger pangs in their bodies, and on the other side, soldiers, members of the GPU, who carry out the orders that are coming from the proletarian dictatorship. They have attacked the country like a huge cloud of hungry locusts and have plundered it of all its food. They have shot down or deported thousands of peasants thus destroying some villages altogether. They have transformed the most fertile country of the world (Ukraine) into a desert." Ukraine became the land of bitterly crying, starved children and of women weeping in despair, seeing their exhausted and hunger-stricken children dropping dead * * * The pangs of hunger drove the people mad. In their madness some of them tried to quench their gnawing hunger with human flesh, attacking each other. In 1936 there were still 325 deported persons on the Slovokian Islands among whom there were 75 men and 250 women who had turned into cannibals during the great famine of 1932–33.

In all the villages, along the roads and all over the fields of Ukraine the corpses of those who had died of famine were lying * * * The whole country was littered with corpses * * * There were special brigades in villages whose duty was to bury the dead. Quite often they were unable to cope with their duties. The corpses were pounced upon by dogs who had turned wild. No doubt, many men and women who were very weak were buried along with the dead * * * Here are some facts contributed by eye-witnesses.

A trucker from the village of Fursa in the district of Kiev was paid in grain for carting away corpses, five grams of grain per corpse. One day this carter brought a big wagonload of corpses to the cemetery and began to dump it off. One of the "corpses" got up and was about to start home. The carter grabbed him by the scruff of his neck and wanted to throw him down again with the rest of the corpses, fearing that he would lose five grams of grain. The unwilling "corpse" began to plead and finally came to an understanding with the carter. The carter brought him back home. This "corpse" lived till 1941.

Here is another similar case. "In the village of Parkhomovtsi, in the district of Kharkiv, the brigade that was picking up the corpses stopped at the house of Pylyp Koval. The men entered the house. The owner of the house was not yet dead * * * With great difficulty he pleaded: 'Don't drag me * * * Give me something to eat * * * I am not dead yet * * *' But the

corpse-collectors answered: "You will die anyway * * * We have no intention of coming here again to get you.' Soon Pylyp Koval found himself in a big communal grave. At night he scrambled up from among the dead bodies and crawled from the cemetery to the nearest house. There he was given to eat a piece of cooked meat from some dead animal. He recovered. He was still alive in 1942. But he was not known anymore by the people of the village as Pylyp Koval, but as the Immortal Deadbones."

It is not enough to say that the Soviets caused the famine deliberately in order to break down the opposition of the peasants who refused to join the collective farms. They also took all the possible steps to make their gigantic terrorist action against the Ukrainian peasantry really effective.

It was prohibited to write and talk about the famine. Officially the existence of the famine was denied. It was officially said that there had not been even any undernourishment. All the offers from the charitable organizations from abroad to help the starving people were declined with sarcastic remarks to give aid to their own unemployed. Besides, nothing at all was done in the U. S. S. R. itself to help the starving people, though the grain elevators were filled with grain.

How many people actually died of starvation during the famine in the Ukrainian Socialist Republic in 1932–33? The Soviets used all possible means to keep their crime secret. The physicians were forbidden even to say that anyone had died from undernourishment. Computations show that, in accordance with the natural increase of population for the period of 1924–27, there should have been at the beginning of 1939 in Ukraine 28,500,000 people. But there were actually at the date of the census, on January 17, 1939, only 31,000,000 people (to be exact 30,960,200).

As we see, the deficiency in the numbers of population in Ukraine, on account of the famine of 1932–33, comes to 7,500,000 people. This number consists of two parts: the number of those who actually died of starvation in 1932–33 is 4.800,000, and the decrease of births, due to the famine, comes to 2,700,000.

It is interesting to note that the Soviet sources give the number of the population of the Ukrainian Socialist Soviet Republic at the beginning of 1932 as 32,680,700 people, and only 31,901,500 people at the beginning of 1933. In other words, even the Soviet statistics show that at the beginning of 1933 the population of Ukraine was 779,200 less than at the beginning of 1932. If we take into consideration also the natural annual growth in the population for 1932 we shall have to add to the total population at least 700,000 more. Besides, the famine was only started at the end of 1932. The figures we have given include only the Ukrainian population within the boundaries of the Ukrainian SSR, but it is well known that the famine of 1932–33 was deliberately caused also in such other Ukrainian ethnic territories as Kuban and the region of Don (included in the Russian SFSR) where the population also put up a stiff opposition to collectivization.

Here is the most important reason why there was such a small increase in the population of the Ukrainian SSR from 1926 to 1939. But the numerical changes within the population of the Ukrainian SSR were not due entirely to famine, for this was only one cause of these changes.

The extermination of Ukrainians in the compulsory labor camps

As it well known, the collectivization that was introduced in 1929 went on side by side with the policy of the so-called "liquidation of the kurkuls (the well-to-do peasants) as a class," that is, the liquidation of the richest and the most nationally conscious class of the Ukrainian peasantry. In accordance with the decision of the Central Executive Committee and of the Council of People's Commissars of February 1930, the local Soviets were authorized "to take all necessary steps in the fight with the kurkuls, including the confiscation of their property and their deportation from the region or district." Actually this decision gave freedom of action to the local authorities. From then on they could apply it to all classes of peasants who refused to join the collective farms. The local Soviets really did apply their extended authority with such vigor that the Central Committee of the Communist Party in 1930 added in its report: "It has been noted that some groups of the 'dekurkulized' peasants include also peasants of middle means and even some without any means."

We can imagine the tragic and brutal method of the "dekurkulization" of the Ukrainian peasants and its extent from the following account of a peasant Sh. from the district of Kharkiv:

"On May 22, 1929, all that I possessed, farm implements, cattle, buildings, and even our clothes were confiscated. Being left without any means to live, I and my family (my wife, mother, and six small children) were forced to beg for food in the village and lived on what the kind people gave us. And what the people gave they gave it to us in secret, as it was forbidden by the authorities to give food to anyone who went around begging * * * On November 27 we were evicted from our own home, in spite of the fact that the whole family had hardly any clothing and the temperature was 15° below the freezing point. We lived until February 1930 in an abandoned, half-ruined house. On February 28 I and my family (my wife and six of our children now without my mother who had disappeared somewhere) were arrested and taken with other "dekurkulized' peasants, to a railway station. There we were driven by force into freight cars. (We had as little space there as canned sardines.) We traveled like this by train for 11 days, not knowing our destination. Food was given to us only once every 2 days. Many people died during that trip from starvation and cold. Thus they finally brought us to the railway station of Makarykha, which is near Kotlas, in the district of Archangel. With the temperature 40 below, we were simply 'unloaded' in the woods, directly into the snow.

"Immediately all those people who could work were taken into the woods 300 kilometers from Kotlas. They made us march in the bitter cold, though we were only partly dressed. Daily each one of us was given 300 grams of bread (about two-thirds of a pound), 5 grams of grits and 3 grams of salt. Many persons simply dropped down dead during that march. Those who dropped but were still alive were put out of their misery by the bullets of the guards on the spot. When we arrived finally at our destination, we were made to cut down the woods. They gave us very bad food. The amount of work that each of us had to do was usually heavy. We lived in little earthen huts—dugouts that we made for ourselves. Out of the many thousands of people who came there, more than half died of sheer exhaustion, starvation, and cold.

"More than half of these who were left behind near the station of Makaryka, near Kotlas, froze to death. Two of our sons, Ivan and Fedir, froze to death, and the third, Hryhori, died of sheer exhaustion. Later all the children under 14, including three of ours, were taken back to Ukraine. But I do not know what became of them later. At the beginning of 1932 both of us, first my wife, and later I, succeeded in escaping from there in the freight cars that were loaded with lumber. We found work in the Donbas region. In 1937 my wife was arrested again and shot to death in the prison cell in the Donbas town of Artemivske. What saved me was the fact that I was living under an assumed name. At present I am a DP living in Germany in an IRO camp."

The brutal process of "dekurkulization" went on throughout the years of the first 5-year plan in some 60,000 villages and individual farms of the Ukrainian SSR. Long columns of trains kept taking "kurkuls" with their families to the far north. Many peasants, having no wish to join the local collective farms, and knowing that they were going to be "dekurkulized" for such a refusal, left their own homes and possessions and ran away, most frequently beyond the borders of Ukraine, to the newly built cities and settlements and thus avoided the Soviet concentration camps.

The history of the Ukrainians living under the Soviets is but one endless story of a people that is continually being terrorized, purged. The Ukrainians are continually being destroyed, as a cultural and national entity, in a systematic, progressive way, according to a plan. The extermination of the Ukrainians is done at periodic intervals. One such period was during the story and tragic years at the beginning of collectivization. The attack was launched simultaneously both against the Ukrainian peasants and the Ukrainian intelligentsia—the educated and leading class. The court proceedings at the beginning of 1930 against the ULU (the Union for the Liberation of Ukraine) gave the Soviets a formal excuse for making mass arrests among all those classes of Ukrainians who were conscious of their separate national identity. A whole series of court proceedings took place then against, for instance, groups of Ukrainian agricultural experts, forest experts, etc.

We can imagine to what extent the leading class of Ukrainians was exterminated from a statement in The Communist, the official newspaper of the Central Committee of the Communist Party, of May 19, 1931, which said that 20,000 schools in Ukraine were then without teachers" * * *

The Yezhov terror in 1937–38 was but a continuation of the wave of extermination. That bloody wave rolled across Ukraine and left behind it many hundreds of thousands of Ukrainian families with someone missing * * *

It has been calculated that between the years of the last two censuses (1926 and 1939), at least 10 percent of the Ukrainian peasant households (that is, about 500,000) were abandoned either because of dekurkulization or because many people simply left their homes and ran away. This means that some 2,300,000 Ukrainians were forceably uprooted from their homes. As a matter of fact we should add to this number at least half a million Ukrainian workers and professional experts who were either killed off or deported to the Soviet concentration camps.

There are reasons to believe that the figures we quote are rather understatements than otherwise. We should bear in mind that in the city of Vinnitsya alone were found 20,000 bodies of Ukrainians who had been shot to death between 1937 and 1939. We have also evidence that many Ukrainians escaped beyond the borders of Ukraine. The Economic Geography of the U. S. S. R., published in 1940, points out that "during the last 12 years (1926–39) there was a considerable migration of people from the Ukrainian S. S. R. and the Byelorussian S. S. R. into the industrial centers of the Russian S. F. S. R., especially into the new manufacturing centers." Due to such migration "the population of the Ural region, of Siberia, and of the Far East increased by 5,900,000," and in addition, "3,000,000 people came there from other regions." The same book underlines the fact that "the population of the Archangelsk region increased by 25 precent and the population of the Murmansk region was multiplied by 9."

The change in the racial aspect of Ukraine by forced measures

The direct extermination of the Ukrainians and their deportation beyond the borders of Ukraine is only one phase of the fight that is being waged by the totalitarian Bolshevist state against the Ukrainians.

The natural aspirations of the Ukrainians to national independence have not ceased even for a moment during the whole period of the Soviet occupation of Ukraine, and all the time such aspirations have encountered the fierce opposition of the Soviets. It is easy to understand this opposition. The main purpose of the Soviets is to decrease the number of Ukrainians in one way or another. This main purpose of Moscow makes it employ all possible methods for liquidation of the Ukrainians as a national entity in the shortest possible periods, through extermination and by denationalization and Russification.

Officially there is a pretended Soviet recognition of the rights of the Ukrainian language and Ukrainian culture, but actually the Soviets wage a continual, stubborn, and systematic struggle against all phases of Ukrainian life. This struggle is the outcome of the ever-active Soviet policy of denationalization and of Russification.

Here are some proofs of the above statement

The census of 1926 shows that there were about 8,000,000 Ukrainians living mostly in compact groups in the U. S. S. R. outside of Ukraine. The cultural, educational, and national needs of such Ukrainians have never been adequately satisfied. When collectivization began, the policy of Russification in the regions inhabited by the Ukrainians was intensified. Then, finally, the Central Committee of the All-Union Communist Party (Bolsheviks) telegraphed a decree on December 15, 1932, ordering the local authorities to Russify all the Ukrainian institutions, serving Ukrainians, which existed within the U. S. S. R. but outside of the Ukrainian S. S. R. In addition, many scores of thousands of Ukrainian leaders and educators were relieved of their offices in the territories outside of the Ukrainian S. S. R. In the regions that actually border on the Ukrainian ethnic territory there were the following numbers of Ukrainians in 1926:

	Population	Percent of the entire population	
		Ukrainians	Russians
In the districts of Kursk and Voronezh	1,412,000	64.2	35.4
In the Don region	537,000	76.8	20.6
In the Sub-Caucasus	1,348,000	63.8	28.4

Yet in spite of the fact that these regions directly border on Ukraine and in spite of the fact that the majority of their population is Ukrainian they have been incorporated within the Russian S. F. S. R. This was done deliberately in

order to accelerate the process of Russification of the Ukrainian population in those regions.

Finally, great numbers of foreigners, mainly of Russians, are migrating to Ukraine, in place of the Ukrainians who have been either deported or exterminated. A considerable number of such newcomers settle on the land or work in the factories. A great number of them also occupy political, administrative, economic, and educational positions. This helps greatly in speeding up the process of denationalization and of Russification of the Ukrainian population.

Of course, it was not the Soviets that began this policy of Russification in Ukraine. They are simply continuing the policy of the czars, which was scoring quite a success. We can appreciate this when we remember that 23.4 percent of the population living on the Ukrainian ethnic territory in 1947 was non-Ukrainian. There is no other country in the world that has such a big national minority. Of course, every nation that loses its independence can expect this same lot.

The long Russian rule in Ukraine, with its endeavor to Russify its population, was the cause of a continual influx of all kinds of officials from Russia, predominantly of Russians. We have to bear in mind that even after the Revolution in 1917, under Kerensky's rule, the Russian officials in Ukraine, west of the Dnieper, received a bonus of 10 percent of their salary for their help in the work of Russification.

Under the Soviets all efforts at Russification were intensified. They acquired a new vigor, especially with the beginning of collectivization. The Reds concentrated their Russification policy especially in the big Ukrainian cities and in the industrial centers.

It is possible to reach some definite conclusions on the basis of the material in the last three census reports. We can see from the following table the changes that were shown by the vital statistics of Ukraine during the period from 1897 to 1939:

	1897		1926		1939	
	Population	Percent	Population	Percent	Population	Percent
Population of Ukraine	20,500,000	100	29,000,000	100	31,000,000	100
Ukrainians	15,700,000	76.6	23,200,000	80	19,600,000	63.2
Others	4,800,000	23.4	5,800,000	20	11,400,000	36.8

By 1926, in comparison with 1897, the population of Ukraine increased by 7,500,000, or by 48 percent. The number of Ukrainians, in proportion to the others, increased from 76.6 percent to 80 percent in 1926. But for the period of 1926–39 the number of Ukrainians dropped by 3,600,000 (from 23,200,000 to 19,600,000), or by 15.5 percent. Their percentage fell from 80 percent in 1926 to 63.2 percent in 1939.

During the same period the number of non-Ukrainians in the population of Ukraine increased by 5,600,000 (from 5,800,000 to 11,400,000); that is by 96.6 percent. The percentage of non-Ukrainians rose from 20 percent in 1926 to 36.8 percent in 1939; i. e., almost doubled itself. Among the non-Ukrainians numerically Russians are leading.

It is necessary to emphasize here the fact that out of the 5,600,000 increase in the non-Ukrainian population between 1926 and 1939 the natural increase could amount at most to 1,200,000. In other words, the other 4,400,000 persons migrated to the Ukrainian U. S. S. R., mainly from the Russian S. F. S. R. Without the people who migrated to Ukraine, there would have been in 1939 in the Ukrainian S. S. R., not 31,000,000, but only 26,000,000; that is, 2,400,000 less than in 1926.[2]

[2] In the publication that was printed in 1947 to commemorate the eight hundredth anniversary of Moscow we find the following statement in chapter IX: "Moscow continues to send to various republics and regions trained workers and engineers, experienced organizers, and chiefs of industry. The engineers and technicians, teachers and physicians, who have been educated in Moscow, are building up communism wherever they go. * * * Thus Moscow renders its brotherly help from the great Russian people to others." The above statement needs no comments from us.

Colonial exploitation of Ukraine by Russians

Ukraine under the Soviets has all the features of a colony whose population is subjected to economic exploitation and to the crime of genocide. This can be seen in the following table of occupations of the main racial groups in Ukraine:

	The main racial groups in the Ukrainian S. S. R. (percent)			
	Ukrainians	Russians	Jews	Others
Whole population	80.0	9.2	5.4	5.4
Workers	54.6	29.2	8.4	7.8
Civil servants	51.6	25.0	14.9	8.5
Persons of liberal professions	47.9	15.2	30.4	6.5
Farmers who work only with their own families	88.6	4.9	1.3	5.2
Farm establishments with business officials	33.8	19.4	40.8	6.0

Most of the Ukrainians are found doing hard manual work: 88.6 percent of the Ukrainians are engaged in farming. Proportionally the smallest number of Ukrainians is found in the occupations that require little physical exertion (in the farm establishments with business officials, among the members of the liberal professions, and among the civil servants). Such occupations belong predominantly to the non-Ukrainians mostly imported from the Russian S. F. S. R. Such was social and economic situation of Urkainians and non-Ukrainians in Ukraine in 1926. Today after bloody extermination of Ukrainian intelligentsia (1931–37) the position of Ukrainians in their native country has worsened considerably.

Let us now come to some definite conclusions in regard to the population policy of the Soviets in Ukraine. The quantitative and qualitative changes that have already taken place can be summer us in this manner:

There should have been in the Ukrainian S. S. R. in 1939, 38,500.000 people, divided thus:	But actually the population of the U. S. S. R. in 1939 was 31,000,000, divided into:
(*a*) Ukrainians 29, 900, 000	(*a*) Ukrainians 19, 600, 000
(*b*) Others 8, 600, 000	(*b*) Others 11, 400, 000

As can be seen, there is missing for the period of 1926–39 on the territory of the Ukrainian S. S. R. some Ukrainians. Instead of the possible and expected 29,900,000 Ukrainians we have only 19,600,000. Where did the 10,300,000 Ukrainians disappear? Let us remind ourselves of their fate: Some died during the famine of 1932–33 of starvation, to the number of 4,800,000; others numbering some 2,800,000 either ran away or were deported; besides, there was a decrease in the number of births, due to the famine, of 2,700,000.

Such was the population of the U. S. S. R. on the eve of the Second World War. What changes in it were brought about by war? Out of the total number of soldiers of the U. S. S. R. (amounting to 7,500,000) who were killed during the war, more than one-fifth were from the Ukrainian S. S. R.; that is, some 1,500,000. As is well known, a special mobilization "method" was used in Ukraine in order to increase the number of recruits. Besides, Ukrainian divisions were thrown into some of the bitterest battles of the war: At Moscow, Stalingrad, Kursk, and Leningrad. In consequence, the casualties of the Ukrainians were unduly higher than among the Russians.

At the start of the war, during the Soviet retreat, a great number of Ukrainians were exterminated by the retreating troops, as some of them were suspected of being unreliable.

Ukraine was a continual battleground during the recent war. Twice the armies of Hitler and of Stalin rolled through it. Both the Germans and the Soviets used the policy of the "scorched earth." Such a policy caused terrible losses, both in property and people. Many hundreds of thousands of Ukrainians died in Germany as slave laborers. Many hundreds of thousands of Ukrainians were persecuted and destroyed by the Germans for their fight to liberate Ukraine.

Finally war came to an end, but there was no end to the genocide policy of the Soviets in Ukraine. The Ukrainians are still being exterminated * * *. The fact that all the Ukrainian ethnic lands are now within the Soviet fold simplifies Moscow's policy. Now the people of the western Ukraine are con-

tinually being deported to Siberia. At the same time, with Moscow's tacit agreement, the Ukrainians are being subjected to a systematic extermination in the Ukrainian territories that are included within the new boundaries of Poland and Czechoslovakia.[3] Furthermore, the Ukrainian S. S. R. is continually being subjected to "purges" at the hands of such "experts" in Ukrainian affairs as Postishev, L. Kaganovich, Khrushchov, and others.

It is hard to state the exact number of Ukrainian war casualties. But we do know that the Ukrainians, caught between the anvil and the hammer, between the brown and red types of imperialism, between Hitler and Stalin, have suffered the heaviest casualties of the war. Nor is there any end to their casualties. The struggle in Ukraine goes on. Right now, as in the past, Ukrainian blood is still being shed daily, as the Ukrainians fight on for their social and national liberation. This fact is corroborated by the continual heroic struggle against the oppressors by the Ukrainian Insurgent Army—the well-known UPA.

[Excerpt from the Ukrainian Quarterly, vol. V, No. 3, summer, 1949, pp. 238–248]

Eyewitness Report on the Vinnitsa Mass-Murder Discovery

(Given by M. Seleshko, Ukrainian journalist now in Canada)

Toward the end of February 1944, when I was marking time in a German prison in Potsdam, I was transferred to cell No. 20, already occupied by several other prisoners. After a brief acquaintance I learned that one of these was a Ukrainian from the vicinity of Vinnitsa. We came to know each other closely and he told me his life history. At that time he was 23 years of age, born and bred in the Soviet Ukraine. He had been educated by the Communist Party and had been a Communist in the full meaning of the word. Communist ideals were his ideals. He fought on the German-Soviet front. After his capture by the Germans, he was forced into antiaircraft artillery work for the Germans in Berlin. Because of negligence in line of duty he was thrown into jail. There our paths met.

I kept asking him questions about life under the Soviets. He formerly belonged to a civilian border-patron unit. Being a Comsomol, he took his duties seriously and helped track down many foreign intelligence agents who were trying to slip across the border into the Soviet Union. There were others, young Soviet patriots like himself, in the villages and districts.

He told me of the steps taken by the Soviets in Ukraine as a preparation for war. In the Communist Party at least as early as 1937 it was felt that war against Germany was imminent. Confidential instructions to members of the party and the Comsomol stressed this eventuality. These instructions ordered that the Soviet hinterland in Ukraine be purged of enemies of the people. By the words "enemies of the people" were meant not only all those people who worked actively against the Soviet regime but also those who were believed to be inclined to hostility toward the Government, including those whose complete devotion to the regime had not been clearly manifested.

A purge of enemies of the population of the Soviet border regions was commenced. Herein lies the story of the Ukrainian tragedy in Vinnitsa, which was revealed to the world in 1943.[1]

My young companion is now a Ukrainian patriot, and much about him must not be made public. Everything he said supplemented my own knowledge of the Vinnitsa tragedy and helped to complete the picture I had formed of it during my experience in Vinnitsa.

In the summer of 1943 I was living in Berlin under the close supervision of the Gestapo as a suspected foreigner, an unreliable alien and a Polish citizen. On July 2, 1943, during the noon hour, I was called to the telephone by what the Germans called the Ukrainian Confidence Service. This was a German Government agency which registered all Ukrainians in Germany and it tried to win their support for German purposes among the Ukrainians.

The chief of this agency informed me that in the near future a special committee for the investigation of mass murders in Ukraine and would depart to do

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[3] Dushnyck: Death and Devastation on the Curzon Line, 1948.

[1] Vinnitsa is a Ukrainian city, which was prior to 1939, approximately 100 miles from the eastern border of Poland.

its work on the spot. He also told me that I had been appointed interpreter for this committee because of my knowledge of German, Ukrainian, Russian, and Polish, and in addition because I knew how to type in both German and Ukrainian. He suggested that I accept this position voluntarily and at the same time emphasized that, should I refuse, I would be drafted for it on the basis of a certain mobilization regulation.

I had no choice. I asked for several hours to consider the proposal. I immediately got in touch with my friends, among them Dr. Oleh Kandyba-Olzhych, the Ukrainian poet, who was living illegally at that time in Berlin. We agreed that it would be best for me to go with the commission, even though its destination was not known. And I had not asked, for in Germany during the war it did not pay to be overly inquisitive.

After 2 hours I called the confidence service and announced my willingness to accompany the commission as a translator-interpreter. I was instructed to await further instructions via telephone. About 5 p. m. of the same day the headquarters of the criminal police telephoned. I was ordered to appear at their address and to report to an official named Denerlein. I went.

Denerlein, a friendly man of rather advanced age, immediately introduced me to several officials in his department and said that we would depart for Ukraine immediately. After brief interviews I was given appropriate military traveling documents and allowed to return home.

The criminal police department was swarming with uniformed police, some of them wearing an armband marked SD, which meant that these officials were from the special political section Sicherheits-Dienst. By piecing together various bits of conversation, I deduced that our group was going to the front lines. Among the members of the commission were Raeder, Krupke, and Groner, all three commissars of the criminal police. State-Councilor Klass, the chairman of the commission, was already at the place where the commission was supposed to function.

We set out July 4, 1943, by way of Warsaw, Lublin, Kovel, and Shepetivka. Before our departure I was given a pistol as a preparation for any eventuality. We were unmolested in Warsaw, although at that time the battle in the Jewish ghetto was going on, but beyond that city our route was through a region controlled by Ukrainian insurgents (UPA).

Immediately outside of Warsaw we passed long trains that had been blown up. In the town of Kovel in the Ukrainian province of Volyn we had to transfer to another train. Precautionary measures for defense against partisans were taken and ridiculously enough, I was ordered to hold my pistol in my hand in ready position for firing against the machine guns and mines of the guerrillas. We were not attacked, however, for the insurgents shot up with machine guns the dummy tank train that had been purposely sent ahead of us and we experienced nothing beyond fear. At the railway station in Shepetivka, however, we met action on a somewhat broader scale. After our train, loaded with German soldiers, pulled in at the railway station, the Ukrainians destroyed all of the four rail lines leading into Shepetivka, and we could not continue the journey. We managed to reach Vinnitsa without any losses, around 11 o'clock at night We were driven in police automobiles to No. 5 Mazepa Street. Under the Bolsheviks this had been named Dzherzhinsky Street, and the building had housed the regional headquarters of the NKVD.

Excavations in Vinnitsa

In Vinnitsa I was informed about the purpose of the commission by one of its members, a photographer, who arrived in the city at some earlier date. With the aid of the civilian population, mass graves had been discovered, in which thousands of corpses had been buried. These graves were to be opened and the commission was to establish whom the NKVD had murdered. The commission lived and worked in the former headquarters of the NKVD, the place from which the mass murder was directed. It included among its members German specialists in criminal investigation.

The exhumations in Vinnitsa began on May 25, 1943, and were carried on in three places. The population was of the opinion that there were around 20,000 victims in the war years. In addition to our commission, two other bodies—a legal and medical commission—took part in the investigations.

Our committee unpacked its equipment, set up its office and on July 7 after lunch set out in automobiles for the scene of the exhumations—a garden along the Lityn highway, which leads from Vinnitsa to Lviv by way of Lityn.

From the conversation of the police, who were housed in the same barracks that we were, I had gained a more or less adequate picture of what had taken place. The first sight of the corpses horrified me, as did the stench that came from them. It was a hot summer day and it was necessary to steel one's nerves in order to live through the horrible experience. I had been a soldier in the Ukrainian Army during the First World War and had seen many men killed in battle, but what I had then seen can in no way be compared with what I witnessed in that park.

A huge mass of people were milling among the trees in the garden. Everything was permeated with the heat of summer and the horrible stench of corpses. Here and there workers were digging up the earth. From it, with the use of ropes, they pulled out human corpses, some of them whole, others in pieces. They laid them carefully out on the grass. At first it seemed to me that there were thousands of them, but later I counted them and there were but 700 lying on the grass. Everybody present had a serious expression. The local inhabitants examined the exhumed corpses and scrutinized the remnants of clothing. From the graves workers threw out bits of cloth and placed them in separate piles. The wet clothes were spread on the grass to dry. The dry clothes were searched for papers and other belongings. Everything was taken out, and registered; the documents found were read, when possible, and recorded; those not legible were preserved. Now and then from one group or another burst out the agonizing, hysterical cry of a woman, or the groan of a man, which resembled the terror of death. A woman recognized the clothes of her loved ones, or a man those of a member of his family. All of them, it was later ascertained, had been sure that their relatives were somewhere in exile in Siberia, perhaps, or in the Far East, in the North, somewhere. Now they learned how the Soviet Government had fooled them, for their loved ones lay in Ukrainian soil, in Vinnytsia, murdered by the NKVD. The Government had met all questions with the reply that all in exile were deprived of the right of communicating with their families.

After the first shock had lessened, and I had become accustomed to the sweet, unpleasant stench, I took a greater interest in the investigations. The digging was done by common criminals from the local prison under the guard of German police. Alcohol was frequently given to the workers so that they might be able to stand the stench. Men and women, clothed and unclothed, were dug up. Men with their hands tied behind their backs. Here and there heads that had been beaten in; sometimes the nap showed signs of bullet wounds. Black corpses, mummified corpses, corpses yellow-black with cadaverous wax. They had been in the earth a long time, for the most part deformed by the pressure of the soil above. Members of the commission, old criminologists who had seen many a crime, affirmed that never before had they seen anything so ghastly. In an area close to the graves doctors made immediate autopsies and tried to ascertain the cause of death. The horror of Vinnitsa I shall never forget, and it is doubtful whether even a Dante would be able to portray the agony that had taken place.

Our next point was the Gorky Park of Culture and Rest, named in honor of the Russian poet. Here the scene was no better than the previous one. A lesser number of corpses was unearthed, for the most of the digging was done in the garden along the highway. The bodies of mothers, fathers, sisters, and brothers had been buried under the earth, and over it boards had been placed for the young people to dance and amuse themselves, unaware that their relatives' corpses were lying underneath. The names of those Communists responsible for such diabolical measures are known and it is hoped that their evil memory will not pass into history forgotten.

The picture was the same in the graveyard opposite the park. Beside the regular graves as well as under the stones of the original graves were found mass-victims of the NKVD.

The commission at work

The committee worked industriously. Witnesses of the horrible tragedy were questioned, the place of the criminal executions determined, and the time as well. Documents found either alone or on the corpses were analyzed; nothing was overlooked; German thoroughness, often approaching absurdity, as it seemed to me, was employed. I was not acquainted with the techniques of criminologists, the clues they put together in order to arrive at the facts, and often what to me appeared beyond dispute they accepted with reservations and searched for unimpeachable evidence. The hours of work were from 10 to 16 each day. I was used as an interpreter between the local inhabitants and the German

specialists. Thousands of people volunteered to act as witnesses for the commission. They volunteered in spite of the fact that Bolshevik agents made many threats of revenge, and insisted that the Germans had killed these people and were now seeking to place the blame on the NKVD. This twist interested me, and I paid special attention in order to ascertain its veracity. Insofar as I am concerned, there is no doubt that the unearthed corpses in Vinnytsia were the first victims of the Bolsheviks, murdered in what was in fact a preparation for war.

I cannot describe the entire work of the commission, all that it ascertained and concluded. I imagine that its findings have been recorded in detail and are available somewhere. As a Ukrainian in civilian attire, it was easy for me to get around, for I felt that I was at home, on native Ukrainian soil. The Germans, of course, did not enjoy such a confidence in Vinnitsa, for they had come as conquerors. A complete history of the entire tragedy will one day be written by historians. I was forbidden from doing anything on my awn and was able to maintain official contact with my friends only through the German military post office, which was scrutinized by the Gestapo. I made no personal notes. Instead, another opportunity presented itself: through the kindness of one of the members of the commission I was able to send personal letters of Ukrainian friends in Berlin. He gave the letters to a pilot assigned to regular duty between Berlin and Vinnytsia. I recorded as much as I could in the form of private letters, and the material arrived in the hands of my friends without accident. On the basis of these letters I am able to reveal the impression I had of the tragedy in Vinnytsia.

Some special incidents of the tragedy in Vinnitsa

A few incidents will illustrate the tragedy.

The wife of a priest named Biletsky from the vicinity of Vinnitsa recognized the garments of her husband lying on a mound. She cleaned the garment and a patch was revealed. As proof that she spoke the truth she departed for her village, and returned to the commission a few days later with other bits of the material used for patching. The committee examined the materials and agreed that the patch on the priest's coat came from the same material. This was proof that her husband had been shot and buried in Vinnitsa, but the NKVD had informed her that her husband was in exile without the right of communicating with his family.

Hanna Hodovanets, a Ukrainian peasant woman, recognized her husband's coat as they unearthed it from a mass grave. She told the police about her husband's arrest. He had been arrested because he had not reported at work on a certain holiday. She had done everything possible to find out what had happened to him, and one day in 1938 she received a card from Moscow, from the procurator's office and signed by none other than Andrey Vyshinsky, with the news that her husband had been freed from prison in March 1938. However, her husband had never returned home, and she felt that something was wrong. Her feelings became a sad reality when she recognized her husband's coat.

Another Ukrainian woman, Olkhivska by name, sat for hours on the hills of dirt as the corpses were lifted from the graves. At one grave she gave vent to cries of anguish. She had just recognized her husband who had been arrested by the NKVD, by a broken small finger as well as by his clothes. And she too, told a story that ended in a mass grave.

There were similar examples by the hundreds, while thousands of others found no clues whereby they might identify their loved ones. I talked with them, recorded their tragedies, shared their suffering. The commission studied the methods of Soviet interrogation and trial, torture and execution, prison and exile. It interviewed thousands of witnesses, went through a mass of varied documents, and examined the belongings of witnesses.

The following incident suggests that justice may yet triumph in this world. A note was found in the coat of the exhumed corpse of a heroic Christian. It was wet, as was the corpse, but was carefully dried. Then I set to work to decipher it. With the aid of several local Ukrainians we put together the story. The paper was of ordinary stock, white in color, used in local school tablets. In crude handwriting was penciled :"I * * * beg the person that finds this note to pass on to my wife, Zina * * * from the village * * * region of * * * that I was denounced to the NKVD by the following * * *." And here were the names and addresses of seven persons. The note continued: "They bore witness against me before the NKVD and spoke falsehoods. I have been sen-

tenced to death and in a short time will be shot. God knows that I am innocent. Let God forgive their transgression; I have forgiven them."

We refused to believe what he had read. To expect such magnanimity from a simple peasant in the moment of death was too much to believe. But the fact stirred everybody. We informed those in charge of the investigation, and later it was found that it was all true. Two of the persons named in the note had died in the meantime, two were officers in the Red Army, and three were available in the neighborhood, peacefully going about their business, since no one knew that they were secret assistants of the NKVD. During my presence in Vinnytsia they were not arrested. The Germans, however, recorded all the secret helpers of the NKVD. Some of them managed to obtain administrative posts during the occupation, and often announced themselves as of German origin. The Germans were aware of this maneuver and were preparing a surprise move called "lightning action," Blitzaktion. I was later informed that this "lightning action" had been executed before the Germans abandoned Vinnitsa. The three were supposedly killed, but the act of vengeance was accomplished by unclean hands that had no right to be termed just, for they were guilty of the murder of 40,000 Jews and an unknown number of Ukrainians in the Vinnitsa region.

Hulevych, Skrepek, and many other Ukrainians testified how the NKVD transported the corpses to the burial points. They stated that the bodies were transported from NKVD headquarters at No. 5 Dzherzhinsky Street, that at night they saw and heard the trucks in action and that in the morning on the way to work they saw the blood that had dripped from the trucks and that they saw NKVD underlings covering up the signs of their work at the site of the mass graves. There were also witnesses who testified that from trees they observed what was happening behind the high walls of the NKVD compound and that graves were dug and corpses buried. It was a fact well circulated in the city that two Ukrainians, who had dared to peer through the board fence despite the prohibition, had disappeared never to be seen again. It was also common talk that a boy, who had tried to climb the fence in order to steal some apples, disappeared without a trace after the NKVD guards caught him in the act.

How the NKVD operates

I talked with those people in Vinnytsia who first divulged the information about the mass murders, on the basis of which excavation was begun by the Germans. The commission found a woman who had worked in the NKVD headquarters for 15 years. She was superannuated, and not in command of all her mental faculties, but the memory of what had transpired long before she retained as though it had happened yesterday. When the Bolsheviks retired before the German advance, she remained in Vinnitsa by frustrating efforts made by the government to evacuate her. Her revelations, although chronologically vague, were valuable in that they described Soviet methods of investigation and punishment. Former prisoners of the NKVD gave corroborative testimony.

One such former prisoner, named Dashchin, who had been in exile in the Kolyma region, told of an incident in a gold-mining camp. The camp contained 7,000 prisoners from all parts of the Soviet Union, and upon completion of the work there it was evident that the means of transportation to another locality were not available. The prisoners were too week from malnutrition to go elsewhere on foot, for the nearest work-camp was thousands of kilometers distant. The problem was solved very simply. The prisoners were driven to a cliff that had been mined, and were blown into oblivion. Dashchin was one of the few that miraculously survived the explosion. Somehow he managed to trek across Siberia and return to Ukraine.

The NKVD usually made arrests at night searching the house and later writing a protocol on the case. The Commission found very many of these protocols both with the corpses and in a separate grave where only documents were buried. All arrested were accused of being "enemies of the people." Some had refused to renounce their religion, others had opposed the collectivization of their private property, still others had spoken dangerous words against communism. Some had been victims of denunciations or revenge, others had failed to appear at work during a religious holiday, while many had changed their place of work without the permission of the NKVD. Many witnesses questioned by the committee were unable to explain why their relatives had been arrested. Their inquiries addressed to the NKVD or the judge simply evoked the stereotyped reply, "enemies of the people exiled for a long period of time without the right

of communication with their relatives." Women appealed to Stalin and other leaders of the Soviet state, but the reaction was the same. I saw and read many cards carrying that message. Among the items found in the graves were remnants of priestly garments, religious books, and correspondence of the murdered with the authorities of the state and the police. Items discovered were put on display—photographs, letters, postage stamps, and crosses—and many residents identified their dead relatives by them.

A religious group in the region of Ulaniv deserves special mention. Called the sect of St. Michael, 19 of its members were arrested by the NKVD and some of them were identified in the graves. They were recognized because it was their custom to wear a white cross sewn to their clothes. Garments with this cross were found in the graves, sometimes alone and at times still about the corpse. Many members of this sect visited the excavation and recognized their coreligionists.

Statistics on the tragedy

From May 1943 to October 1943, 9,432 corpses were found in 3 places of excavation. There were 91 graves with corpses, and 3 with only cloths or documents. Forty-nine graves had from 1 to 100 corpses, 33 from 100 to 200 corpses, and 9 from 200 to 284 corpses; 169 corpses were of women, 120 of advanced age, according to the findings of the medical commission; 49 women were of young or middle age. The corpses of females of advanced age were clothed, whereas those of the younger years were naked. This seemed to bear out the rumors common among the local population that the young women arrested by the NKVD were subjected to sexual brutalities prior to their execution. One pregnant woman was found who had actually given birth to a child in the grave. Most of the corpses were of people from 30 to 40 years of age. Most had died from bullets from a special gun. Some of the victims had been hit by two bullets, others had but one bullet in the head, while still others had received as many as four. Evidences of skull fracture by means of an instrument, apparently the butt of a rifle, were found in 391 cases. The stronger men had their arms and legs bound. Cases of shooting in the forehead as well as the back of the head were recorded.

Of the total of 9,432 corpses 679 were identified, 468 by their garments, 202 by documents, and 2 by body marks. From the point of view of occupation the identified included 279 peasants, 119 workers, 92 officials, and 189 members of the intelligentsia. Nationally the identified were broken down into 490 Ukrainians, 28 Poles, and 161 uncertain, although the names of the last group suggested almost all the nationalities of the USSR and some from Europe as well.

These basic statistics speak for themselves. Only one place, the garden, was thoroughly examined, for the park and the cemetery were only partially investigated. It is not excluded that many more bodies had been buried in these places. Other localities, which according to the reports of the local population, were also scenes of mass murder by the NKVD were not inspected. It was ascertained that other Ukrainian cities that had been regional and district headquarters of the NKVD had also experienced mass executions. Efforts were made to verify the rumors circulating among the population regarding mass graves. Kiev, Odessa, Zhytomir, Berdychiv, Haisyn, Dnipropetrovsk, Krasnodar in the Kuban region, and other places were supposed to be investigated, but chaotic conditions in Ukraine frustrated such endeavors. It is known, however, very definitely that in Krasnodar, where the Kuban kozaks fought stubbornly against the Bolsheviks in an effort to win independence, the NKVD employed a special machine which ground up the bodies of shot, and oftentimes still living, persons as if they were meat and automatically dumped this mass of human flesh into the Kuban River. This brutality was affirmed by eyewitnesses who reported various phases of the slaughter.

My companion in the German prison in Potsdam told me that in 1937 instructions were given both to the Communist Party and the Comsomol to cleanse the border districts of Ukraine of "enemies of the people." This purge was carried out. The revelations of this former Comsomol both agreed with and supplemented the findings obtained by the committee of investigation.

Destruction of the Ukrainian Intelligentsia

When the Russian Communists conquered Ukraine in 1920, they initiated a ruthless policy of the determined and systematic extermination of the Ukrainian intelligentsia. In so doing they patently endeavored to deprive the Ukrainian

people of their leaders, thus the more expeditiously to subject the people to their authoritarian and Communist rule.

This systematic destruction of the Ukrainian intelligentsia, i. e., professors, teachers, scientists, doctors, writers, poets, journalists, students, artists and the others, has continued to be part of the Soviet genocidal policy in Ukraine.

The first major purge of the Ukrainian intelligentsia occurred in 1926, when the Moscow leaders decided the time was ripe to break down the Ukrainian autonomy and make Ukraine a puppet state under the leadership of the Kremlin. Three prominent Ukrainian Communists—poet Mykola Khvylovy, economist Volubuyev, and commissar of education Shumsky were declared "bourgeois nationalists" and "enemies of the people." As they were ceremoniously removed from their posts, a great number of their followers were either executed or deported to the Solovetsky Islands in the North Sea.

In 1930 the Soviets organized a veritable pogrom of Ukrainian intellectuals by arresting hundreds of Ukrainian professors and scientists in Kiev and Kharkiv for alleged opposition to the Soviet regime. A huge monster trial was staged in Kharkiv in that year when 45 Ukrainian intellectuals were charged with trying to undermine the Soviet regime and to establish a Ukrainian "bourgeois" government. All were charged with belonging to the "counter-revolutionary organization, Union for the Liberation of Ukraine, headed by the three defendants: S. Efremov, V. Chekhivsky, and A. Nikovsky. The indictment was signed by V. Balytsky, head of the GPU in Ukraine, and his two assistants, V. Horozhanin and B. Kozelsky, on February 7, 1930.

The following Ukrainian intellectuals were tried and convicted to prison terms ranging from 3 to 10 years:

1. Academician Serhiy Efremov.
2. Prof. Volodymyr Sadovsky.
3. Prof. Volodymyr Dudukivsky.
4. Prof. Andrew Nikovsky.
5. Madame Ludmila Starytska-Cherniakhivska, writer.
6. Prof. Joseph Hermaize.
7. Mykola Pavlushkov, student.
8. Boris Matushevsky, student.
9. Alexander Hrebenetsky, teacher.
10. Mykola Kudrytsky, M. D.
11. Vsevolod Hnatsov, professor of philology.
12. Prof. Alexander Cherniakhivsky.
13. Hryhory Holoskevych, professor of languages.
14. Arcady Barbar, M. D.
15. Volodymyr Udovenko, M. D., professor.
16. Volodymyr Pidhayetsky, M. D., professor.
17. Hryhory Kholodny, professor of astronomy.
18. Mykhaylo Kryveniuk, economist.
19. Volodymyr Strashkevych, professor of philology.
20. Vadym Sharko, mathematician.
21. Victor Dubrovsky, professor of languages.
22. Kost Turkalo, professor of chemistry.
23. Auksentiy Bolozovych, professor, cooperative expert.
24. Maksym Botvynovsky, professor, cooperative expert.
25. Rev. Mykola Chekhivsky, of the Ukrainian Orthodox Church
26. Mykhaylo Ivchenko, writer.
27. Zenoviy Margulis, journalist.
28. Nina Tokarevsky, teacher.
29. Andrew Zalisky, professor of physics.
30. Yuriy Trezvynsky, teacher.
31. Hryhory Ivanytsia, professor of philology.
32. Vasyl Doha, professor of philology.
33. Kost Shylo, professor of chemistry.
34. Kost Tovkach, professor of jurisprudence.
35. Volodymyr Shepotiev, professor of philology.
36. Petro Blyzniuk, teacher.
37. Mykola Lahuta, teacher.
38. Mykhaylo Slabchenko, academician.
39. Taras Slabchenko (son), student.
40. Kyrylo Panchenko-Chalenko, cooperative expert.
41. Petro Efremov (brother of academician), professor of literature.
42. Lubov Bidnova, teacher.

43. Mykola Billy, teacher.
44. Joseph Karpovych, teacher.
45. Velentin Atamanovsky, economist.

At that time the maximum penalty was 10 years, a sentence which was given to most of the defendants. A few years later, when a new penal law went into effect, the sentences of these convicted men were doubled.

(Taken from the official Ukrainian text of indictment: Vynuvalniy Vysnovok v spravi contr-revolutsiynoyi organizatsiyi Spilka Vyzvolennia Ukrainy. Kharkiv, 1930. The Indictment in the Case of the Counter-Revolutionary Organization, The Union for the Liberation of Ukraine, Kharkiv, 1930).

At the beginning of the collectivization period hundreds of thousands of Ukrainian intellectuals were liquidated. It is significant to note that members of the Communist Party of Ukraine were included in this blood bath. In 1931 a total of 51,713 members were stricken from the party roster and sent to Siberia (H. I. Lazarevsky: L'Ukraine sous les Soviets, La Revue de Promethee, Paris, December 1938). The whole intellectual class of Ukraine was under fire.

Mr. Yar Slavutych, a Ukrainian writer from Soviet Ukraine, who recently arrived in the United States as a displaced person, writes in Svoboda, a Ukrainian-American daily founded in 1894, that during the 30-year rule of the Russian Communists in Ukraine, the Russians have killed or deported to slave labor camps at least 114 major Ukrainian poets, writers, and artists. His article, appearing in the above-mentioned daily under the date of January 11, 1950, reads in part:

"During the course of the Bolshevik occupation (of Ukraine) at least 114 prominent Ukrainian writers, poets, professors of philology have been either executed outright or exiled to the northern death camps where they died from hunger. Here is an incomplete list of those executed or exiled, and they are only more prominent cultural leaders of Ukraine:

"1. Executed: Hryhory Chuprynka, Hryhory Kosynka, Kost Burevey, Alexander Vlysko, Dmytro Falkivsky, Mykola Khvylovy (committed suicide), I. A. Krushelnytsky, T. Krushelnytsky, M. Lebedynets, R. Syhevchenko, and others.

"2. Deported to death camps in the north: Mykola Zerov, Pavlo Fylypovych, Eugene Pluzhnyk (died in 1936 in the Solovetsky Islands), Mykhaylo Dray-Khmara, Boris Teneta, Yuriy Vukhnal, Les Kurbas, Mykola Kulish, Oleksa Slisarenko, Klym Polischuk, Valerian Polischuk, Geo Shkurupiy, Joseph Hermaize, Mykola Vorony, Marko Vorony (son), M. Yavorsky, Volodymyr Yaroshenko, Hryhory Epik, Myroslav Irchan, Antin Krushelnytsky, Vasyl Mysyk, Vasyl Bobynsky, Hryhory Kolada, Vasyl Vrazhlyvy, Mykola Filansky, Yakiv Savchenko, Valerian Pidmohylny, Mykhaylo Semenko, Dmytro Zahnul, Mykhaylo Johannsen, Mykhaylo Ivchenko, Oles Dosvitny, A. Paniv, Ivan Dniprovsky, Volodmyr Gizytsky, A. Antonenko-Davydovych, Hnat Khotkevych, Serhey Efremov, Mykhaylo Novytsky, Hryhory Kosyachenko, Ivan Mykytenko, Ivan Kyrylenko, Hordiy Kotsiuba, Zinaida Tulub, Vitaliy Chyhyryn, A. Nikovsky, O. Synyavksy, and S. Pylypenko."

In addition to these Ukrainian intellectuals and cultural leaders, several Ukrainian Communist leaders were destroyed by the Russians because of their known antipathy to Moscow policy in regard to the Ukrainian people. Among them was Mykola Skrypnyk, member of the Central Committee of the Communist Party, member of the Politburo of the Communist Party of Ukraine, director of the Marx-Lenin Institute, an old Bolshevik, and a close friend of Lenin. He was accused of "tolerating" Ukrainian nationalism and patriotism and was summoned to Moscow in 1933 to recant his "errors." He refused to recognize his "errors," and killed himself.

Moscow dispatched a new dictator to Ukraine, Postyshev, who promptly organized new and vigorous purges in Ukraine, directed not only against the nationally conscious Ukrainian peasants, but against Ukrainian Communists as well. The Ukrainian premier, Panas Lubchenko, was accused of "nationalist diviation" and committed suicide; his successor, Mykhaylo Bondarenko, was recalled to Moscow whence he never returned.

Postyshev and Kaganovych, sent from Moscow to Ukraine in 1937, succeeded in finishing the liquidation of almost all Ukrainian Communists of prominence. Such as Zatonsky, Petrovsky, Grinko, Yuriy Kotsiubynsky, Porayko, Tytay, Chubar, Balitsky and many others were liquidated despite their professions of loyalty to the Soviet regime and Stalin.

When the Soviet troops occupied western Ukraine in 1939, then part of Poland, they immediately began to round up the Ukrainian intelligentsia. It is impossible

to give even the approximate number of these arrests, so sweeping were they. A partial list of the Ukrainian intellectuals and professionals is given by Vasyl Mudry, former Ukrainian democratic leader in prewar Poland and Vice President of the Polish Parliament. Writing in Svoboda, the Ukrainian-American daily appearing in Jersey City, N. J., under date of January 10, 1950, he gives the following:

"It is impossible to enumerate these hundreds of thousands of Ukrainians deported or killed by the Soviets, but I will endeavor to give the names of those people who I know were taken by the Russians: Dr. Kost Levytsky, Dr. Dmytro Levytsky, Dr. Volodymyr Starosolsky, Dr. Ostap Lutsky, Dr. Ivan Nimchuk (escaped and is now in Canada), Prof. Volodymyr Kuzmovych, Volodymyr Celevych, Ivan Kvasnytsia, Porfir Bunyak, Chorniy-Rosenberg, Stepan Rudyk, all from Lviv; Dr. Ivan Blazhkevych and Dr. V. Ilnytsky from Drohobych; Senator Mykola Malytsky and Prof. Ilarion Brykovych, Dr. Ostap Siak, Dr. M. Hrynevetsky, Dr. Dzerovych (Berezany), Dr. Bezpalko (Zolochiv), Dr. Yaroslav Selezniak (Radechiv), Dr. Volodymyr Electorovych, Dr. Khychiy and Dr. Synenky (Chortkiv), Dr. Dolynsky, Vasyl Baranyk (Zalischyky), Dr. Hryniv, Dr. Roman Sluzar (Buchach), Dr. Volodymyr Venglovsky (Birbka), Hryhory Tershakovets, M. Tarnavsky (Sambir), Judge Luka Nalukovy (Sambir), Dr. Dudykevych (Birbka), Dr. Lominsky (Mostyska), Dr. V. Mohylnytsky (Rivne), Dr. G. Okhrymovych (Strey), Dr. Mykola Bykh (Stanyslaviv), Dr. Kulchytsky (Stary Sambir), Alexander Pisetsky (Hrymaliv), Dr. Yurkov (Zhydachiv), Dr. H. Hankevych (Sniatyn), Dr. Mykolaychuk (Nadvirna), Dr. Komarynsky (Horodenka), Dr. Osyp Kohut (Bohorodchany), Dr. Zayats (Lviv), Actress Anna Yurchak and her daughter (Lviv), Sylvester Harasymvych (Lviv), Dr. Nestor Voronych (Tarnopol), Stephania Havrysevych, Professor Leschiy (Lviv), and many others."

When the Russians occupied the eastern part of Germany and Czechoslovakia, they organized manhunts for Ukrainian intellectuals. In Prague they arrested and deported to Siberia Rt. Rev. Msgr. Augustine Voloshyn, former Premier of Carpotho-Ukraine, Prof. Ivan Zilinsky, Prof. Sadovsky, Prof. Kochurak, Prof. Pereuznyk, Prof. Halka Mandzula, Dr. Skydan, Dr. Omelchenko, and others. Like deportations of Ukrainian leaders occurred in Austria and the city of Berlin. From Vienna the Russians deported Gen. Victor Kurmanovych, Dr. M. Tvorydlo, and from Berlin, Rt. Rev. Msgr. Peter Werhun, apostolic delegate for the Ukrainian Catholics in Germany.

It is conservatively estimated that at least 75 percent of Ukrainian intellectuals and professional men in Western Ukraine, Carpatho-Ukraine, and Bukovina, and Bessarabia have been brutally exterminated by the Russians as a result of their political pattern of genocidal practice.

THE RELIGIOUS POSITION OF THE UKRAINIAN PEOPLE, ESPECIALLY OF THE UKRAINIAN CATHOLIC CHURCH IN UKRAINE, POLAND, RUMANIA, AND CZECHOSLOVAKIA

I. THE TOTAL NUMBER OF UKRAINIANS

On these territories as of March 1, 1933:

(*a*) Total number of Ukrainians: 42,566,000. Distributed as follows:

1. The U. S. S. R. (21 percent of population)	34,624,000
2. Poland (19 percent of population)	6,188,000
3. Rumania (6.5 percent of population)	1,114,000
4. Czechoslovakia (4.5 percent of population)	640,000

(*b*) As far as the religious denomination is concerned, the Ukrainian population in the Soviet Union, according to the pre-Bolshevik census, is Orthodox, although the new generation (1917–37) was brought up in a Communist and atheistic regime, without possibility of christening and without any religious education at all. Therefore, it is possible to give statistics relevant only to that portion of the Ukrainian people who lived outside the Soviet Union, i. e., in Galicia, Rumania, and Czechoslovakia.

1. Poland: Ukrainian population, 6,188,000 (year 1935), of which number 3,633,000 or 59 percent were Catholic.

2. Rumania and Czechoslovakia, 1,754,000, of which number 667,000 or 39 percent were Catholic.

Of the total number of Ukrainians in eastern Europe, 42,566,000, the Catholics numbered 4,300,000, or roughly 10 percent of the entire population of Ukraine.

Of the total number of Ukrainians living outside the Soviet Union, 7,942,000, 4,300,000 or 52 percent were Catholic.

On the territories outside the Soviet Union in 1937 the Ukrainian Catholics had 4,480 churches and chapels, about 210 monasteries and religious houses, in which there lived and worked 2,960 diocesan priests, about 600 monastic priests, and 1,250 nuns.

II. THE LEGAL POSITION OF THE CHURCH ON THE UKRAINIAN ETHNOGRAPHICAL TERRITORIES

(*a*) *The U. S. S. R.*

"In order to ensure to citizens freedom of conscience, the church in the U. S. S. R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of antireligious propaganda is recognized for all citizens" (thus article 123 of the constitution of the Ukrainian Soviet Socialist Republic, which is the same as article 124 of the constitution of the U. S. S. R.).

"In conformity with the interests of the working people, and in order to strengthen the socialist system, the citizens of the Ukrainian Soviet Socialist Republic are guaranteed by law: (*a*) Freedom of speech; (*b*) freedom of the press; (*c*) freedom of assembly, including the holding of mass meetings; (*d*) freedom of street processions and demonstrations.

"These rights are ensured by placing at the disposal of the working people and their organizations printing presses, stocks of paper, public buildings, the streets, communication facilities, and other material requisites for the exercise of these rights."

Yet on the basis of article 123 of the constitution of Soviet Ukraine, the Church is deprived of these prerogatives in the exercise of these rights; on the contrary they are referred to another part of the same paragraph, namely, "freedom of antireligious propaganda."

In its instruction No. 328 of January 16, 1931, the NKVD, or the Soviet secret police, explains that "the religious societies are not considered legal persons and therefore, they are forbidden (*a*) to organize houses of mutual aid, hostels, shelters for pilgrims, the poor, and collections for funeral purposes; (*b*) to organize cooperatives, agricultural societies, those of artisans and others, and to use the funds of the cult for other purposes than those of religious needs; (*c*) to organize meetings of children, youth, and women, and the like for prayer; (*d*) to organize meetings, circles, and literary, artisan, and professional groups with the purpose of teaching religion, and so forth; (*e*) to organize excursions and kindergartens for children; (*f*) to open libraries and reading rooms; (*g*) to organize sanitoria and medical services. Thus article 3 of the instruction. In article 2 of the said instruction there is mention that church services only are allowed. (See Il cristianesimo nell 'Unione sovietica, p. 63 and following.)

Decree of January 23, 1918, on the Separation of the Church from the State (Excerpts)

"The school is separated from the church. The teaching of religion is prohibited in all public schools as well as in private schools having for their purpose a general education. It is permitted to citizens to teach and to study religion privately only" (Collection of Laws, art. 9, p. 56).

"All religious organizations are subject to the general laws on organizations and private associations; they cannot have any privileges or subsidies from the state or its local autonomous instiutions" (art. 10).

"No collections or compulsory dues for church or religious societies are permitted, nor allowed is any coercion or punishment of their members by such organizations" (art. 11).

"No religious or church organization has a right to private property. These societies have no rights of legal persons" (art. 12).

"All properties of religious and church organizations that exist in Russia are decreed nationalized properties. Buildings and articles of the cult should be transferred to the proper religious organizations for the free-of-charge use on the basis of special instructions of the government authority, local or central" (Collection of Laws, art. 13, pp. 56–57).

"For administration and usages of the articles of the cult the religious societies shall elect from among themselves religious executive organs: (*a*) Religious association—three members; (*b*) the group of faithful—one representative" (Collection of Laws, art. 9, p. 95).

Decree "On Religionus Associations," of April 8, 1929

"The teaching of religion is prohibited in state, public, and private schools, and in educational institutes" (art. 18). "With regard to the religious teaching of minors (up to 18 years of age), such might be given only by parents, and to their own children only. The new law voids the previous decision on the teaching of religion to children in a group of three by a person invited by the parents, because such groups constituted in a small form a secret religious school" (Explanations of the Decrees, art. 18; Collection of Laws, art. 84, p. 63).

"Religious societies and groups of faithful can begin their activities with the moment of their registration with the Commission of Religious Affairs of the proper Council of the community and with the Regional Executive Committee (Collection of Laws, art. 4, p. 80).

"Only a group of citizens numbering not less than 20 can organize a religious society" (art. 29).

"The citizens obligate themselves to use the church buildings and articles of the cult and to permit their usage only to their own faithful for the gratification of their religious practices exclusively."

"The citizens obligate themselves to renovate the premises of the cult, to bear all expenses connected with the usage of the articles of the cult, such as insurance, taxes, collections, and other expenses" (art. 39, annex 7, points 2, 4).

Excerpts from the Instruction of the NKVD of 1931, added to the Law on Religious Associations"

Compare what was just said "on religious associations" in general, with the following:

"In state institutions or enterprises, whether public or private, no religious ceremonies of any sort, or placing therein any of the articles of the cult, is allowed. Religious services on public premises and in various assembly centers are prohibited" (art. 24).

"A religious organization or a group of the faithful has the right to collect voluntary contributions for the needs of the cult and the maintenance of the church building in the building itself as well as outside of it among the faithful whom this particular religious organization serves. In case of such a collection outside the building, the religious society should give appropriate information regarding the person who is entrusted with the collection; in cities such information should be given to the city council (Soviet), and in villages to the village council (Soviet)" (art. 6).

"Any compulsory imposition of dues upon the members of any religious society as well as the keeping of records of monthly dues is prohibited. Any coercion with the purpose of abetting the religious society entails liability with respect to article 124 of the Criminal Code of the RSFSR" (art. 7).

"Voluntary contributions of money should be recorded in a separate book of income and expenses" (Collection of Laws, art. 8, p. 94).

[To be inserted: (*b*) Poland, French text; (*c*) Rumania, French text; (*d*) Czechoslovakia, German text.]

III. ECONOMIC POSITION OF THE UKRAINIAN CATHOLIC CHURCH (POLAND, CZECHOSLOVAKIA)

The economic position of the Ukranian Catholic Church consisted to a great degree of:

(*a*) The possession of church and parochial buildings (homes and farm buildings), which for the most part were of good or fair quality;

(*b*) Land grants, sequestrations and annual dues of the parish members;

(*c*) Subsidies by the state (Concordat with Poland).

Because the majority of the diocesan clergy had a marital status, grants and other auxiliary incomes were barely sufficient for the sustenance of the priest and his family.

As far as the fundamental economic level of the Ukrainian Catholic Church in Galicia and Carpatho-Ukraine is concerned, it is extremely difficult to ascertain its real value. But as far as land grants and approximate income are concerned, the following is known to be true:

(*a*) Archdiocese and diocese of Lviv (Lwow): before 1937 had 33,448 hectares[1] (82,650 acres) of land in their parishes, and other additional incomes—4,000 cubic meters[1] (141,000 cubic feet) of wood for fuel;

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[1] 1 hectare=2.471 acres; 1 kilogram=2.2046 pounds; 1 koret=100 kilograms=220.46 pounds; 1,460 korets=321,872 pounds; 1,460 korets=161 tons; 1 cubic meter=35.319 cubic feet.

(*b*) Dioceses of Peremyshl had 35,975 hectares of land grants (88,860 acres), 4,460 cubic meters (158,000 cubic feet) of wood for fuel, and 1,460 korets[1] (161 tons) of wheat;

(*c*) Diocese of Stanislaviv had about 22,352 hectares (55,210 acres) of land, and 2,490 cubic meters (88,000 cubic feet) of wood for fuel.

Prior to 1937 the Church of Galicia altogether had about 91,775 hectares (226,685 acres) of land (arable land, gardens, orchards, meadows, pastures, and unutilized parcels). On this land were 1,907 parishes with about 2,000 clergymen, who in most cases had families. In these statistics are not included the episcopal, cathedral, and monastic possessions (about 6,000 hectares or 15,000 acres). Proportional figures could be assigned to the Ukrainian Catholic Church in Rumania and in Czechoslovakia. For instance, the diocese of Presov, Czechoslovakia, in 1931 had an income of about 180,000 Czech kronen in the parishes (25 localities did not report their income).

In addition, almost every parish had some buildings, both dwellings and farm structures of varying quality, the value of which was not estimated.

On the basis of statistics it is known that only a very small number of parishes worked their own individual farms (homesteads). Generally, the parochial land was cultivated by the parishioners as share-croppers, which was not without benefit to them and their community.

In some localities there were other donations for the Church, such as servitudes (certain form of land grants), occasional grants, and so forth.

IV. CONTRIBUTION OF THE UKRAINIAN CATHOLIC CHURCH TO THE NATIONAL LIFE OF THE PEOPLE

(*a*) *Cultural.*—From the very beginning of Christianity on those territories the church and the clergy (both lay and monastic) played a prime and important role among the people. Especially in Galicia under Austria the Metropolitan of Lviv at the same time was also a political leader of the people, a phenomenon which remained when the country went under the domination of Poland. This was especially true of Metropolitan Andrey Sheptytsky, who was the head of the church from 1900 until his death in 1944. The intellectual circles who gave the cultural impetus to the people were largely recruited from the clergy or their families. In 1937 a considerable number of cultural leaders (writers, poets, journalists, engineers, teachers, and the like) had come from the clergy or their families. Generally speaking, the villages as well as the small towns tried to live up to the cultural level of the priests.

(*b*) *Social.*—The Catholic Church in a village or town is a first family as well as a first homestead in that locality. As a rule the priest's wife was at the head of the charitable and Samaritan organizations, while he was the organizer and leader of social life in the community; he was a leader and a member of the local cooperative, reading group, the Raiffeisen savings bank, and other economic and social groups in the community. As a further development of the social life one has to consider the increase of various institutions such as the shelters for children and the aged, orphanages for orphans, shelters for the infirm—all these were under the auspices of the various organizations and orders of the nuns, such as the Basilian Sisters, Sisters of the Holy Family, the Josephites, and the like.

They conducted artisans' schools—tailoring and dressmaking, embroidery, and so forth. In the villages they ran the first-aid stations, while in the cities and towns they worked in hospitals. It would be difficult to enumerate all their activities. Suffice it to say that they, generally spaking, have contributed a great deal to the development of the social life.

(*c*) *Educational.*—School and educational work in Galicia and Carpatho-Ukraine has been greatly developed, especially in the field of private schools. The Ukrainian Catholic Church had two seminaries (Lviv, Rohatyn); two juvenates (Zboiska, Buchach); girls' institutes with dormitories at Peremyshl, Yavoriv, Lviv, Drohobych, Stanislaviv, Berezhany, and Kolomeya; private Ukrainian gymnasia under the auspices of the Basilian Sisters at Peremyshl, Lviv, and Stanislaviv and with their direct help, at Rohatyn, Drohobych, and Lviv. The many dormitories for high-school youth, orphanages (130) for children, the preschool education, the various seasonal courses and the like—all were under the guidance of the church.

In addition, toward the elevation of the cultural level of the people, in every village and town there were reading houses with their libraries (Prosvita,

Skala) which not infrequently adjoined the church and were under the directorship of the parish priest.

An immense influence upon the development of the religious life came from the various church demonstrations, Catholic congresses, conventions, and pilgrimages. One such national-wide manifestation was a Catholic youth one under the name, "Ukrainian Youth-to-Christ," held in Lviv in 1933 in which the church and the clergy took leading part.

V. STRENGTH AND INFLUENCE OF CHURCH ORGANIZATIONS, THE PRESS

Organizations.—Each parish had at least two or three church organizations, such as brotherhoods, to which belonged almost all the adult parishioners. The over-all purposes were beautification of the church and of the rite, common prayer, and the deepening of religious life. Outside the local brotherhoods were those of national scope, such as the Brotherhood of the Sacred Heart and that of the Apostolic Prayer (under the auspices of the Basilian Fathers), numbering hundreds of thousands of members who took active part in the activities of these organizations. Of special importance were those other organizations, closely connected with the church, whose purpose was educational or charitable mission, such as the Marian Societies of girls and boys, students, and women, which had a national headquarters and leadership and which from time to time organized periodical congresses and conventions, artistic and religious exhibits, as well as regular retreats. They punished their own press (Vistnyk—The Herald), and some of the groups, The Marian Society of the Youth, for example, were widely known in the country.

It can be stated with certainty that all school youth as well as the artisan youth and to a great extent the youth of the villages was embraced by those religious organizations. During the last years before World War II the organization of the Catholic Action was developing very quickly, especailly since the Ukrainian Catholic Youth Congress in 1933. There existed a General Institute of Catholic Action in Lviv and an organ, The Catholic Action.

The Catholic press.—The strength of the Ukrainian Catholic press, because of the peculiar political circumstances, and especially after 1930, was not too great. Generally speaking, it was in an embryonic stage, particularly as far as the daily Catholic press was concerned. Among the Ukrainian Catholic periodicals there were Misionar (The Missionary), a monthly founded in 1897, with a circulation of 80,000; Nova Zorya (The New Star), a weekly, Pravda (Te Truth), Dobry Pastyr (The Good Shepherd) and Blahovistnyk (The Good Messenger) published in Uzhorod, Carpatho-Ukraine.

There was, of course, a regular professional press which, if it did not stand on a Catholic platform, was with few exceptions with the church because of the importance of the Ukrainian Catholic Church in Galicia and Carpatho-Ukraine. Among the scientific Catholic magazines were such serious and important publications as Bohoslovye and Notes of the Orders of St. Basil the Great. In addition, there were the huge publishing houses of the Basilian Fathers in Zhovkva and Uzhorod, which published hundreds of thousands of popular books, mostly on religious themes, that were widely read by the people.

In 1938 in Galicia there were 27 various Ukrainian Catholic book and newspaper publishing companies, with 21 regular periodicals. All these publishing houses of necessity had to interrupt their publishing activities with the outbreak of World War II, and subsequently were completely suppressed by the Nazis and the Bolsheviks. After 1945, the Ukrainian Catholic publications as such were not resumed for obvious reasons, with the exception of a printing shop and a publication in Uzhorod, Carpatho-Ukraine, which existed but a very short time.

VI. POSITION OF THE UKRAINIAN CATHOLIC CHURCH DURING THE GERMAN OCCUPATION (1939–44)

In Poland (1939–44).—In the so-called general governorship the Nazi authorities strongly favored the Orthodox Church as well as all sectarian movements tending to be detrimental to the welfare of the Catholic Church. The Ukrainian Catholic press was subjected to all sorts of restrictions and suffered as a result of the lack of paper. Not infrequently the Ukrainian Catholic priests were arrested by the Germans. With the subsidies provided by the Polish Government on the basis of the concordat gone, the church also found itself in an extremely difficult financial position.

The situation had not improved with the outbreak of the German-Soviet war in June 1941 and the consequent avalanche of the German armies in the Ukraine. The German authorities tried to compel the priests to help collect contributions or prepare the contingents of workers to be sent to Germany, but such compulsions went unheeded. The attitude of the Nazis toward the Catholic Church was negative as expressed in their policy toward Catholic activities, such as holidays, processions, pilgrimages, conventions, and the like. Generally speaking, the German authorities endeavored to maintain the Catholic Church in the state in which they had inherited it from the Bolsheviks (1939–41). Thus the church and monastic lands, confiscated by the Communists, were not restored to their lawful owners except in some cases where the latter were allowed a temporary usage.

In the main, the church felt the heavy hand of a foreign occupying power which embarked upon the complete liquidation of the free life and in its stead the creation of slavery designed for colonial and slave labor.

In Czechoslovakia, Hungary, Rumania.—The position of the Ukrainian Catholic Church in those countries was somewhat different inasmuch as it was not under the direct supervision of the Nazi government. During the war the Ukrainian Catholic Church experienced all sorts of restrictions and difficulties. In some localities, as for example in Carpatho-Ukraine, the local government forbade the Basilian Fathers to continue their activities as a religious order, notwithstanding the fact that they had been there for several centuries. The Catholic press as a whole, censored and hampered, could not develop as freely as before.

In the U. S. S. R. (the Ukrainian Soviet Socialist Republic) (under the German occupation)—With the appearance of the German armies in Ukraine proper the Ukrainian people, who had been under Soviet domination since 1920, showed a great religious resurgence. The German troops passed quickly through the territory of Ukraine, and the Ukrainians believed that the time had come for them to renew their Orthodox Church, all but annihilated by the Bolsheviks. So we saw millions of Orthodox Ukrainians gathering to rebuild their church, a great majority of them believing in the union with the Catholic Church under Metropolitan Sheptytsky. But this Ukrainian Autocephalic Orthodox Church encountered difficulty in developing its activities because of the lack of Orthodox clergy and of church organizations as well.

The German occupation authorities forbade the Ukrainian Catholic priests from Galicia to enter the territory of Soviet Ukraine; those who succeeded in getting there were promptly deported back to Galicia.

Inasmuch as the Ukrainian Orthodox Autocephalic Church was concerned, the Nazis used all means at their disposal to keep this church from becoming a going organization. In a secret instruction of November 1942 to the German police in Ukraine, the Nazi government expressed its desire that the Ukrainian Orthodox Church not be brought to union with the Catholic Church.

Summarily, the over-all purpose of the Nazi authorities was to weaken the reborn Ukrainian Orthodox Church as much as possible, and at all costs to prevent it from uniting with the Ukrainian Catholic Church. Thus the Nazis terrorized the clergy, with the additional aim that the church could be secured as an instrument of power. Recalcitrant priests were liquidated or deported to slave-labor camps in Germany. Especially they tried to take the youth away from the church by forbidding any church manifestations in which the youth was formerly active. (Examples: ban on all holidays and Sundays during harvesting time, ban on religious schools, so that the youth could not receive religious education.)

In all, the Nazi policy in Ukraine toward both the Catholic and the Orthodox Churches was dictated by their principles of a "master race," to be applied in Ukraine to the end of conquering the territory and enslaving the people.

VII. THE FATAL YEAR OF 1945

In the year 1945 the entire territory of Ukraine, with the exception of small segments in Poland and Rumania, found itself a part of the Soviet Union, specifically as the Ukrainian Soviet Socialist Republic. In the lands which had not been incorporated in the U. S. S. R. began a "repatriation movement," aiming at bringing together all the Ukrainian people under the aegis of Stalin. Over 300,000 Ukrainians with more than 300 Catholic priests became displaced persons in western Europe.

The entire Ukrainian Nation ultimately was brought under the domination of Stalin in the Soviet Union, whose constitution has clearly delineated the church with respect to the state, and where there were no concordats with Rome, as

was the case in Poland, Rumania, and Czechoslovakia. Therefore, the year 1945, which completed the passing of all the Ukrainian territories into Soviet Russia, constitutes an epochal date in the history of the Ukrainian Catholic Church, a date which the church will always regard fearfully and despairingly.

When the Soviet troops entered Galicia, their attitude toward the Catholic Church was entirely different from that of 1939. Then the Soviet Army had had explicit orders not to arrest nor molest the clergy or persecute the church in any way. With the exception of a few incidents and excesses, this policy was observed.

With the second occupation of Galicia there was a general belief that the Soviet Government had indeed changed its attitude toward religion. This belief was supported by various manifestations of the Soviet Government, such as the restitution of the Russian Orthodox Church and its Moscow Patriarchate (Patriarch Sergey, and later Alexei), the reopening of the Orthodox churches and the like. The hope rose that a modus vivendi of the church with the state was possible, despite the constitutional limitations upon religious practices. It was with this sentiment that the Ukrainian Catholic Church displayed loyalty to the new government and did everything possible to cooperate with it. For instance, the sum of 100,000 rubles was donated by the Ukrainian Catholic Church to the field hospitals of the Soviet Army.

But on November 1, 1944, death claimed Metropolitan Sheptytsky, generally recognized as the greatest authority among the Ukrainian people, whom even the Soviet Government had not dared molest. His death was the signal for the Soviets to go ahead with their plans for the Ukrainian Catholic Church. On May 28, 1945, they succeeded in alining a group of opportunist priests in Lviv. These priests organized themselves into a committee of three, called a Committee of Initiative for the Transference of the Greek Catholic Church to Orthodoxy. At the same time the Ukrainian Catholic hierarchy was accused of serving the "interests of fascism." On April 11, 1945, the entire Ukrainian Catholic hierarchy as well as many priests were arrested, with only the Ordinary of the Diocese of Peremyshl, a city nominally in the new Poland, being left free momentarily.

From that time on the Ukrainian Catholic Church was subjected to a veritable martyrdom. The church organization treated in the Soviet constitution was no longer recognized as such; it was now deemed a society, and one dangerous and detrimental to the weal of the Soviet state. (See the text of the Soviet Constitution and the laws on societies from 1918, 1929, 1931.) All Catholic faithful were registered in Soviet police files as potential "enemies of the people" and the Catholic Church itself marked for complete destruction.

VIII. LIQUIDATION OF THE UKRAINIAN CATHOLIC CHURCH (1945–48) IN GALICIA, CARPATHO-UKRAINE AND RUMANIA

Galicia

(*a*) *Attempts to undermine the church.*—Immediately after the arrest of the Ukrainian Catholic hierarchy, an all-out attack on the church began. While the metropolitan and all bishops were accused of abetting fascism, the clergy was accused of helping the Nazis recruit workers for slave labor in Germany and personnel for the army. At the same time the Soviet authorities saw to it that the articles of the Soviet Constitution dealing with the separation of the church from the state were fully applied to the Ukrainian Catholic Church. The priests, moreover, were to be isolated from the people; the clergy was depicted in press and radio as an "antisocial and unproductive element," parasitically dependent upon the people and their support.

On April 6, 1945—i. e., 5 days before the wholesale arrest of the Ukrainian Catholic hierarchy—a pamphlet appeared directed against the late Metropolitan Sheptytsky. His successor, Metropolitan Joseph Slipy, was arrested on April 11, 1945, and accused of poisoning Metropolitan Sheptytsky, while Bishop Charnetsky was branded as an "agent of the Vatican." Other bishops were accused of collaboration with the Germans.

(*b*) *Direct attacks against the Vatican.*—Simultaneously with the attack against the Ukrainian Catholic Church began a violent campaign directed against the Vatican and the Pope. With the creation of the Committee of Initiative for the Transference of the Greek Catholic Church to Orthodoxy, these attacks against Rome became increasingly savage and violent. One of the leading apostates, Kostelnyk, published a pamphlet, Apostle Peter and the Roman Popes, or the Dogmatic Bases of the Papacy, in which he compiled all the arguments extant against the Popes of Rome. Catholicism was intermixed with Polish

nationalism, and the Polonization of the Ukrainians by the former Polish Government. The new slogan was "Away from Rome," because "Rome had become heretical, a destructive force, proud of its conquests of power, and because it collaborated with Poland for the destruction of the Ukrainian rite, church, and the people themselves." (A series of articles entitled "The Sobor in Lviv in 1946," to be found in The Journal (Vestnik) of Moscow Patriarchate. (Speeches and articles by V. R. Vavrik)—(Schultze, B.: L'atteggiamento della Chiesa patriarcale di Mosca verso Roma, Il cristianesimo, p. 293).

(*c*) *Attempts to detach the clergy from the Apostolic See.*—This activity got under way almost in the wake of the arrest of the Ukrainian bishops. As mentioned previously, on May 28, 1945, three apostate priests, Kostelnyk, Melnyk, and Pelvetsky, organized the Committee of Initiative, which had twin goals: (1) to detach the Ukrainian Catholic Church from Rome; (2) to incorporate it into the Russian Orthodox Church. This trio was immediately approved by the Soviet Government, which in an instruction of June 18, 1945, signed by P. Khotchanko, "representative of the Council of People's Commissars for the Affairs of the Russian Orthodox Church on the Council of People's Commissars of the Ukrainian Soviet Socialist Republic," gave it the "power" to direct parishes, contact the Government and to embrace all faithful in its "jurisdiction," those refusing to submit were to be deported by the Government. Employing highly patriotic language and anti-Polish slogans and motives, the group issued an appeal to the clergy on May 28, 1945, for it to recognize authority and to submit to it. To accelerate the process, members of the group, accompanied by secret police, made several tours into the country and removed those priests who proved to be recalcitrant and unwilling to accept Orthodoxy. Those among the priests who did accept the new church, together with a few sextons, were given special identification cards.

One February 23, 1946, a group of 13 members of the clergy went to Kiev, where it officially accepted Orthodoxy. On February 24, and 25, 1946, at Kiev, two new Orthodox bishops were ordained (apostates Melnyk and Pelvetsky) for the dioceses of Stanislaviv and Drohobych.

On March 9–10, 1946, a sobor of the Greek Catholic Church was convoked in Lviv in order to "reverify the decisions of the Brest Union of 1596," to "annul them and to detach the church from Rome and to unite it with the Russian Orthodox Church." With a handful of assorted "delegates," both ecclesiastic and lay, without any discussions or deliberations upon the dogmatic issues of the faith, but to the accompaniment of lusty acclamations for Stalin and the Soviet Army and with the statement that the Soviet Union had united all the Ukrainian ethnographical territories, hence the Ukrainians ought to be united religiously also—this sobor abolished the Brest Union of 1596 and proclaimed its union with the Russian Orthodox Church. After the sobor there began the process of "transference to Orthodoxy," which in practice meant systematic arrests, reprisals and the total liquidation of the church.

(*d*) *Police reprisals in connection with the introduction of Orthodoxy.*—To enforce the acceptance of the decision of the sobor, each parish or monastery or religious house had to sign a declaration stating its adherence to the new church. Those who refused to do so were arrested as "enemies of the people" and dealt with accordingly. Even these drastic measures did not bring about the expected results, since only 1,111 persons (priests and apparently other religious personnel) responded suitably. Fourteen hundred Ukrainian Catholic priests who remained in Galicia and were opposed to the Orthodox Church were not accounted for, while over 300 were found in DP camps in western Europe.

The Soviet administration saw to it that those priests who accepted Orthodoxy were given better parishes; not infrequently the occupancy of these parishes by Orthodox priests was helped along by the Soviet secret police, the MVD. New deaneries have been organized since, and all clergy reassigned to new parishes. The church was initially subordinated to the metropolitan of Kiev, subsequently to the patriarch of Moscow and to the Soviet Government, which has the right and prerogatives to intervene in the affairs of the church, as set forth by the Soviet instruction of June 18, 1945, to the Committee of Initiative, which set into motion the destruction of the Ukrainian Catholic Church.

Church life is rigidly controlled by the Soviet Constitution: (1) There is a complete separation between the church and the state; (2) the church is separated from the school and the education of youth (up to 18 years of age); (3) there is no liberty of religious preaching except within the church's walls; (4) only the exercise of the religious rite is allowed; (5) the church is subject to the laws

"on societies" and to state control; (6) the financial income of the church is based on contributions and donations of the faithful under the control of special church committees; (7) there is no religious press of any kind with the exception of a few organs controlled by the state; (8) there has been effected a complete liquidation of former religious organizations, such as brotherhoods, sisterhoods and the like; (9) there are no seminaries; (10) there is a complete alienation of the youth from religion and the church; (11) a sharp decline of the moral, religious, cultural, and social prestige of the priests among the people has been effected.

A similar process was applied to the Catholic Church in Carpatho-Ukraine between 1944 and 1948.

(1) In 1944 Soviet troops occupied the country. In the initial stages of the occupation the Soviet authorities left the church unmolested; religious activity was in evidence and the church lands were not confiscated.

(2) Later on, in November 1944, Carpatho-Ukraine declared its independence and in April 1945 was incorporated into the Soviet Union (the Ukrainian Soviet Socialist Republic);

(3) Pressure on the part of the state authorities was applied to the Catholic Church in order that it cooperate in introducing the Soviet system (collectivization, nationalization);

(4) A progressive aggressiveness of the local Orthodox Church was developed and was abetted and encouraged by the Soviet Government (with the help of the state authorities the Orthodox Church began expropriating the church lands and assigning them to Orthodox parishes);

(5) There was a complete confiscation of church lands as well as church buildings and those of church organizations;

(6) There was a total liquidation of monastic orders (Mukachiv, Uzhorod), accompanied by strong opposition and dissatisfaction on the part of the people;

(7) There was strong opposition on the part of the people to the persecution of Catholicism, especially to the confiscation of churches;

(8) There was opposition to the forced imposition of the Orthodox Church;

(9) There was a return to Catholicism by some Orthodox parishes;

(10) There was an increase in the prestige and popularity of Bishop Theodore Romzha among the people;

(11) The assassination of Bishop Romzha took place upon the instigation of the Communist government, followed by the arrests of Ukrainian Catholics, and a general persecution of the people upon the instigation of Orthodox Bishop Nestor of Mukachiv;

(12) At present there is no actual Catholic Church organization in Carpatho-Ukraine to speak of. Propagation and imposition of Orthodoxy continue.

A similar fate has befallen the Ukrainian Catholics in Slovakia, especially in the diocese of Bishop Hoydich. From the spring of 1946 continuous pressure was applied to the church. From March 1947 to August 1948 several moves were made to compromise the Ukrainian Catholic Church in Slovakia. The church was ridiculed in the eyes of the people, while the clergy was depicted as an "antistate" element. Then most of the Basilian Fathers and the nuns were arrested and deported to the Soviet Union. In December 1948 a monster trial of Father Huchko and his associates was staged, and ended with severe prison terms for all the accused, who were charged with participating in an illegal underground movement.

In general, the Ukrainian Catholic Church in Slovakia is being slowly liquidated. Already in June 1946, its schools as well as all diocesan and monastic dormitories were confiscated, its monks and nuns being evicted.

The Ukrainian Catholic Church in Rumania (Bukovina and the district of Marmarosz) shared the fate of Rumanian Catholicism. (See Le Documentation Catholique, July 3 and 17, 1949, Nos. 1046–1047, Paris).

IX. PRESENT CONDITIONS IN GENERAL ON THE UKRAINIAN TERRITORIES

(*a*) With the exception of Slovakia (150,000 Ukrainian Catholics), the Ukrainian Catholic Church is officially liquidated, its hierarchy being imprisoned and its clergy, both lay and monastic, dispersed or deported. The faithful, terrorized into submission, anxiously await the change which they believe must come.

(*b*) To all those territories wherein formerly were favorable conditions for the existence of the Catholic Church (Poland, Czechoslovakia, and Rumania), the Soviet Government applied article 123 of the Constitution of the Ukrainian Soviet Socialist Republic in the light of interpretation of decrees of 1918, 1929,

and 1931, and the so-called "church statute" of January 31, 1945, granted the patriarchate of Moscow, to which the Ukrainian Orthodox Church was subordinated and through which the Ukrainian Catholic Church was "united." This "church statute," based upon the Stalinist constitution (art. 124 of the Soviet Constitution and articles "on societies"), is also compulsory for the Ukrainian Orthodox Church and defines its legal position.

(*c*) Economically, the effect of the "union" of the Ukrainian Orthodox Church has been disastrous. The priests and their parishes are totally dependent upon the donations of their parishioners and of the government, which fully controls both the church and the priests.

Difference then and now: Before the war the Ukrainian Catholic Church existed officially with some 4,500,000 to 5,000,000 Catholic faithful; now this church has been destroyed by the Soviet Government in a brutal, despotic, and inhuman manner.

X. REACTION OF THE PEOPLE AGAINST TOTALITARIAN DESPOTISM

In Galicia the entire population, especially the youth, is still accused of having contact with fascism, nazism, or of having collaborated with the enemy, or of actively resisting the Soviet authorities by belonging to the Ukrainian insurgent army (UPA), an underground anti-Soviet Ukrainian movement. Therefore, any opposition on the part of the people to the forcibly imposed Orthodox Church is interpreted by the authorities as one of these crimes (fascism, collaboration with Germans or the UPA) and is ruthlessly suppressed by police and troop forces. The people, who in the last 25 years have known many governments and political changes, have become hardened to them, and are anxiously awaiting new developments to take place. Their apparent apathy toward religion is actually a policy of watch and wait based on the decision to conserve their strength and not to allow themselves to be completely eradicated as a people and nation before that fateful hour of liberation and freedom comes.

In Carpatho-Ukraine the people have been brought under the domination of the Soviet Union for the first time. Not being acquainted with their rule as were the Ukrainians of Galicia from 1939–41, the people of Carpatho-Ukraine initially endeavored to oppose Orthodoxy actively. The clergy was not politically engaged here as the clergy elsewhere, yet was directly accused of collaboration or fascism. In this wise the Communist authorities tried to compromise the clergy in the eyes of the people first and then to liquidate them.

In Rumania the liquidation of the Ukrainian Catholic Church was accomplished together with the Soviet march against the Rumanian Catholic Church.

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SECOND PHASE OF SOVIET SYSTEMATIC GENOCIDAL ATTACK

Mr. DOBRIANSKY. (2) The second attack, usually in part concurrent with the first, is aimed at the soul of the nation, against the churches, their hiearchy and priests. Between 1926 and 1932, the Ukrainian Orthodox Autocephalous Chuch, with Metropolitan Lypkivsky and about 10,000 lay and monastic clergy, was thoroughly liquidated. In 1945, when the Soviets established themselves in western Ukraine and in Carpatho-Ukraine, the Ukrainian Catholic Church was similarly annihilated, an event to which Pope Pius, in his famous encyclical, Orientales Omnes, called the world's attention. Thus, even before the cases of Stepinac Mindszenty, and Beran emerged, the extreme case of Metropolitan Joseph Slipyj and the entire loyal Catholic hierarchy and clergy, who were deported for certain death or outrightly murdered, was a closed chapter. It is most significant, here too, from the viewpoint of Russification, that a largely vain attempt was made to force this clergy to pay allegiance to the Russian patriarch in Moscow, who, as every objective student knows, is presently the political tool of the Kremlin, as his predecessors were for the Czars. I submit in support of these statements further detailed evidence.

In this Evidence of Genocide in the Ukraine I have again the entire background on the liquidation of the Ukrainian Church. I have also a copy of a letter to the New York Times dated August 5, 1949, by the Most Rev. John Buchko, Apostolic Visitator for the Ukrainians in western Europe in Rome; and a brochure of Walter Dushnyck on Martyrdom in Ukraine, under the imprimature of Francis Cardinal Spellman.

(The matter referred to is as follows:)

[From the New York Times, August 5, 1949]

FATE OF UKRAINE CATHOLICS

PERSECUTION BY SOVIET OF CLERGY AND LAITY REPORTED

To the EDITOR OF THE NEW YORK TIMES:

For some time I have been reading the editorials of the New York Times and other American newspapers that reach me about the persecution of the Catholic Church and her hierarchy by the Soviets and their satellites. I am surprised and deeply regret that nothing has been mentioned about liquidation of the Ukrainian Catholic Chuch in western Ukraine and Carpatho-Ukraine, which has been persecuted for so long.

The tragic fate of Cardinal Mindszenty and of Archbishop Stepinac is well known, as well as the recent persecution of Archbishop Joseph Beran of Prague. But hardly anything is know of the fact that the entire Ukrainian Catholic hierarchy has been completely liquidated. Some bishops are dead, others are still suffering in the Soviet camps, where they are assigned to hard labor.

The cruel hand of the Soviet fell upon them during the night of April 11, 1945. All of them had long been singled out as church leaders and patriots, firmly believing in the cause of Ukrainian national independence. All of them were arrested on the same night, and within a short time hundreds of priests and faithful as well. Convenient tools were soon found, who "dissolved" the Ukrainian Catholic Church as such and made it a part of the Russian Orthodox Church under the leadership of the Kremlin-dominated Patriarch of Moscow.

His Holiness, Pope Pius, in his famous encyclical Orientales Omnes, called the attention of the world to the martyrdom of the Ukrainian Catholic Chuch under the Soviet regime and appealed to all Christians to pray for the Ukrainian Catholics.

The Ukrainian Catholic Chuch was the first, but not the last, to fall a victim of the Moscovite war against Rome. None the less, according to reports that still reach us here, the religious spirit of the Ukrainians and their national fervor burn brighter than ever before.

Most Rev. JOHN BUCHKO, D. D.,
Bishop of Cadi, Apostolic Visitator for the Ukrainians in Western Europe.
ROME, ITALY, *July 20, 1949.*

ADDENDUM

According to His Excellency, The Most Rev. John Buchko, Bishop of Cadi, Apostolic Visitator for the Ukrainians in Western Europe, latest reports concerning the fate of the individual members of the Ukrainian Catholic hierarchy are as follows:

His Excellency, the Most Rev. Joseph Slipyj, metropolitan of Lviv, the spiritual leader of the Ukrainian Catholic church and successor of the late beloved metropolitan Andrew Sheptitsky, at present is doing forced labor in a coal mine in Vorkut, in the northern Ural Mountains near the Kara Sea.

His Excellency, the Most Rev. Josaphat Kocylowsky, bishop of Peremyshl Diocese, the oldest of the Ukrainian Catholic Church, held for some time in the Polish Rzeszow Prison, died near Kiev on September 21, 1947.

His Excellency, the Most Rev. Joseaphat Kocylowsky, bishop of Peremyshl Diocese, died in a concentration camp somewhere in Siberia on January 17, 1947.

His Excellency, the Most Rev. Niceta Budka, titular bishop of Patara, former bishop of the Ukrainian Catholics in Canada and later vicar general to Metropolitan Joseph Slipyj, lost his mind after being tortured and died in prison.

His Excellency, the Most Rev. Gregory Lakota, titular bishop of Danio, auxiliary bishop and vicar general to Bishop Josaphat Kocylowsky, was arrested in Peremyshl and since then is also doing forced labor in Siberia.

His Excellency, the Most Rev. John Latyshewsky, titular bishop of Adada, auxiliary bishop and vicar general to Bishop Gregory Chomyshyn of Stanislaviv, is also in a forced labor camp somewhere in Siberia.

His Excellency, the Most Rev. Nicholas Charnetsky, titular Bishop of Lebedo, apostolic visitator for the Ukrainians in Wolhynia, Cholmshyna, and Pidliasye, the later apostolic exarch for these regions, deported, at present is hardly managing to live in the northern Ural Mountains.

His Excellency, the Most Rev. Theodore Romzha, bishop of Mukaciv, with his diocesan see in Uzhorod, Carpatho-Ukraine, died as a result of injuries received October 27, 1947, when a Red Army tank "accidently" collided with the vehicle in which he was riding.

The Rt. Rev. Msgr. Peter Verhun, apostolic visitator for the Ukrainians in Germany, was kidnapped by the Soviets. No one knows whether he is still living somewhere in Siberia.

His Excellency, the Most Rev. John Shimrak, bishop of Krizevci, heading some 10,000 Greek-Catholic Croatians and 40,000 Ukrainians in Yugoslavia, was murdered in prison in 1947 on orders from the Tito regime.

MARTYRDOM IN UKRAINE

Russia Denies Religious Freedom

(By Walter Dushnyck)

Preface

Ruthless persecution of the Ukrainian Catholic Church by the Soviet Government and by Russian Communists is a challenge to our Christian civilization. It constitutes a virtual denial of our deeply founded convictions that no man should be persecuted for his religious beliefs or his political tenets. To secure freedom from such persecution settlers first came to our shores. To guarantee those freedoms the Bill of Rights was added to the Constitution. More recently, our country, together with other nations claiming allegiance to these ideals, fought the Second World War to make sure that the followers of National Socialism would not destroy human liberty.

Today, one of the victors of the war is embarking upon a policy of persecution in order to secure her political gains. We are not consoled by the thought that the Soviet Union, which has turned persecutor, was helped to victory by these free United States. Already several independent states have been incorporated as autonomous Soviet Republics against the will of their citizens. Millions of Eastern Europeans, alien to both Russian race and psychology, have been added to the conglomeration of unhappy beings who live under the iron rule of the "proletarian" dictatorship. Among those unfortunates are the Ukrainians, whose story is told herein.

What goes on behind the "iron curtain" is beyond normal comprehension. Not even during the Mongolian incursions has history witnessed any worse barbarities than are designedly practiced by a member of the United Nations.

In presenting the facts about the persecution of the Catholic Church in Ukraine, the writer, a veteran of the American Armed Forces, has no political end in view. He feels, however, that it concerns all of us to see that mankind is not enslaved.

The Ukrainian Church Today

December 23, 1945, was the three hundred and fiftieth anniversary of the Union of the Ukrainian Greek Catholic Church with Rome. His Holiness, Pope Pius XII, commemorated the occasion by the Encyclical Orientales Omnes Ecclesias. He wrote as follows:

"Once again in these times, with great distress in Our paternal heart, We see a new and fierce storm overhanging the Ruthenian Church. Reports reaching Us, though infrequent, suffice to fill Us with concern and anxiety. Three hundred and fifty years have elapsed since this very ancient community was happily united to the Supreme Pastor, the successor of St. Peter, but the anniversary has been turned into 'a day of tribulation and distress, of calamity and misery; a day of darkness and obscurity, a cloud and whirlwind.' For with grief We learn that, in regions which lately passed under Russian authority, Our brethren and children of Ruthenian people are afflicted with great distress because of their fidelity to the Apostolic See."

What His Holiness had in mind was that all the Ukrainian Catholics now under the Soviet rule are subject to brutal persecution because of their loyalty to the Catholic Church.

Subsequent to the Holy Father's pronouncement, the voice of another Church dignitary was raised in defense of Ukrainian Catholics. Eugene Cardinal Tisserant, Secretary for the Congregation for the Oriental Church, openly declared

that Soviet policy east of the Curzon Line was aimed at "destruction of Catholicism." He charged that in Russia "the order of the day is that the Ruthenian (Ukrainian) Catholic Church must disappear." The Pope, he recalled, had condemned "forced return to one's country" and "denial of the right of asylum." Cardinal Tisserant then added:

"Scenes of great sorrow and despair have occurred in the concentration camps of displaced persons in Germany, Austria, Italy and elsewhere. Some Ukrainians have declared that they prefer to die rather than put themselves in the Communist power, and these have asked for a Christian death. (New York Times, March 2, 1946.)"

Despite Soviet charges to the contrary, the basic facts of Cardinal Tisserant's statement have not been disproven.

In taking possession of his titular church, that of Saint Peter and Paul in Rome, Francis Cardinal Spellman (New York Times, February 26, 1946) vigorously condemned totalitarian procedure and called particular attention to the plight of the Ukrainian Church under Soviet rule. He recalled the Pope's denunciation of the Russian treatment of Ukrainian Catholics and pointed out the uselessness of talking of freedom so long as freedom of religion is denied. The Cardinal then asserted:

"The anxiety that our Holy Father manifested about this portion of his flock extends to many parts of the world where man's right to religious freedom is violated with diabolical deceit and satanic fury."

Reports of religious happenings in other parts of the Russian sphere of influence confirm the Cardinal's stand.

In the United States Constantine Bohachevsky is Ordinary Bishop of the Ukrainian Catholic Diocese, which covers the entire country. He and his Auxiliary, Bishop Ambrose Senyshyn, felt obliged to issue a statement on the treatment of their brethren received in the homeland.

"We speak for a nation whose Bishops, priests, and faithful find themselves powerless to express themselves as they wish—the nation whose people have been rendered helpless by well-known repressive measures of Communist activities in Ukraine. It is of this nation that the recent shocking announcement came from Moscow on March 17, 1946, in which it was declared that her people had broken, on March 8 at the Synod of Lviv, the 350-year-old unity with Catholic Rome in favor of reunion with Russian Orthodoxy. Because it would be a grave injustice to these people and their Church if the world should accept this announcement as the truth, we, the former sons of Ukraine, reared and nurtured on her lands and thoroughly familiar with the history of her people and Church, feel it is urgent that a statement should be made so misrepresentations may be rectified and falsehood may be evident."[1]

The Bishops knew their people and realized immediately that the Soviet announcement could only be the result of fraud.

The truth became evident as further news was received from Ukraine. In a dispatch from its correspondent in Bratislava, Slovakia, the New York Times, on June 6, 1946, revealed:

"More than 100,000 Greek Catholics and some thousands of Jews are reported to have fled Carpatho-Ukraine (Ruthenia), once the eastern end of Czecho-Slovakia and now a part of the Soviet Union. Many of them are said to be hiding in the forests of Czecho-Slovakia, others have fled into Germany and some have joined the 'Bender' group of bandits who have been raiding across the Polish-Czech border."[2]

Who are these people who by hundreds of thousands flee their ancestral homes and seek asylum in foreign lands? Are they fugitives from justice because of crimes committed against their community? Are they unwilling to accept the new rule because of political antipathy toward its philosophy of life, or are they simply terrified because they know a path of martyrdom awaits them from the hands of Russian commissars? What relation have they to the Ukrainian displaced persons whom Cardinal Tisserant reports as preferring a Christian death in exile rather than return to their homes, now under the despotic rule of Russia?

A partial answer to these questions is found in an address by Bishop Senyshyn to the American Catholic Hierarchy in November 1945. Speaking of the Soviet rule in Western Ukraine, he declared that it is "a ruinous one. Brutal enforce-

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[1] Statement of the Bishops of the Ukrainian Catholic Diocese in the United States, April 4, 1946.

[2] The correspondent has in mind the Ukrainian Underground Movement led by Stephen Bandera whose powerful Ukrainian Insurgent Army fought the Germans in Ukraine, and after the defeat of Germany turned against the new oppressor of Ukraine, Soviet Russia.

ments, seizures of cultural possessions, confiscation of Catholic religious institutions, heavy pressure aimed at making Catholics join the Orthodox Church, killings and imprisonment of the clergy and outstanding people these things gave a brief but clear picture of the devastation and enslavement that has been wrought." Further answers to questions about the Ukrainian Church will be found in the brief history which follows.

UNIATE CHURCH—VANGUARD OF CATHOLICISM IN EASTERN EUROPE

1. HISTORICAL OUTLINE OF THE UNIATE CHURCH IN UKRAINE

The purpose of this pamphlet is to give our Catholic readers the background of the sorrowful events which are taking place today in Eastern Europe. To make our task easier, some introductory explanation is necessary, at least so far as the political and geographical nomenclature is concerned.

The main action of the extremely brutal persecution of the Catholic Church by the Soviet Government is taking place in the Western Ukraine, known also as "Eastern Galicia," or the disputed territory east of the Curzon Line. It extends from the Carpathian Mountains in the south to the Pripet Marshes in the north. Populated 75–85 percent by Ukrainians, this unhappy region was troubled for centuries by its neighbors from the west and east. It was originally part of the Kingdom of Ukrainian princes and dukes, one of whom, King Danilo, founded the city of Lviv in 1254. The region then passed under the rule of Polish kings, only subsequently to become a part of the Polish-Lithuanian-Ukrainian federation. With the partition of Poland in the eighteenth century it came under Austrian domination. From 1848 to 1918 it enjoyed various degrees of semi-autonomy until, on Nov. 1, 1918, the Ukrainians proclaimed "the Western Ukrainian Republic". On Jan. 22, 1919, it was united with its sister republic, the Ukrainian Democratic Republic in Kiev, to form one sovereign Ukrainian state. Attacked by the Red and White Russian Armies, by the Poles and Rumanians, it soon succumbed, and at the end of 1919 the Western Ukraine was conquered by the new Poland. It remained under Polish rule until Sept. 17, 1939, when Stalin and Hitler dismembered Poland and established the well-known Curzon Line. On June 31, 1941, after Hitler's attack on the Soviet Union, Ukrainian nationalists again proclaimed a republic, but they were soon arrested by the Germans. The republic was abolished and the Western Ukraine was attached for administrative purposes to the "Government General of Poland", while the rest of Ukraine was divided into districts governed by German Gauleiters.

At no time in history did Western Ukraine belong to any Russian state, Czarist or Soviet!

Popular confusion about the history and geography of Ukraine extends also to the domain of the Church. We are accustomed to hear talk in America about the "Ruthenian" Catholic Church, or "Uniate," or even "Schismatic" Church. The term "Ruthenian" or "Ruthenia' is a derivation from the Latin translation of Rus and Rusky (noun and adjective), the historic names of the Ukrainian people. When Muscovy embarked upon the conquest of its weaker neighbors in the seventeenth century, it not only took the name of Rus, which became Rossia and Russia in English, but usurped the entire early period of Ukrainian history as its own. Hence, since the term "Ruthenian' may imply "Russian" to the reader unfamiliar with the situation in Eastern Europe, the Ukrainian Catholic Hierarchy in Western Ukraine has abandoned its use, calling its Church the Ukrainian Catholic Church of Oriental or Byzantine Rite. In Carpatho-Ukraine, however, which up to 1919 was under strong Hungarian (Austrian) rule, the term "Ruthenian" is still retained when speaking of the Church.

We underscore these differences in order to clarify the following presentation of what is going on in the Soviet-dominated Ukrainian territories. No matter what we call this branch of the Catholic Church, its bishops, priests, and faithful will be the Ukrainians, and it is the Ukrainians who are modern martyrs for their Catholic Church and Faith.

The Moscow radio announced on March 17, 1946, that the "people of Western Ukraine," in a "Synod" gathered in Lviv on March 8, 1946, had broken their 350-year-old ties with the Roman Catholic Church. While the NKVD men were busy rounding up those who refused to apostatise the Journal of the Moscow Patriarchate, organ of Patriarch Alexei, Stalin-made head of the Russian Orthodox Church, constantly pounded away advising the Ukrainian Catholics to come back to the bosom of the Russian Orthodox Church, "their Mother". The Ukrainian Catholic Bishops in the United States, referring to one of Alexei's letters, simply aver that it is "an erroneous conception".

In the year 988, the ancestors of present day Ukranians accepted Christianity from the Byzantine Patriarchate, which at that time was in union with the Catholic Church. Since the Kiev Metropolitan and all his hierarchy were subordinate to Rome through the Byzantine Patriarchate (Constantinople), it was natural that the Great Schism brought by Photius in 1054 should have had its repercussions in Ukraine. Separation followed even though the Kiev State, to quote the Ukrainian Catholic Bishops' statement, "did not formally sever relationship with Rome." Schism occurred later, through the intrigues of Muscovite princes and Byzantium. But Ukrainian metropolitans and bishops did not stop in their efforts to come again under Rome's jurisdiction. The first attempt was made at the Council of Florence, 1439. The Kiev Metropolitan Isidore accepted the Union, and upon his return to Ukraine in 1440, he proclaimed it in such cities as Lviv, Kholm, Smolensk and Kiev. He then went to Moscow, but was imprisoned there by the Grand Duke Basil II. The Byzantine Patriarchate, together with Constantinople, the "Second Rome," came under Turkish rule, and the intrigues of the Russian princes interfered with the Ukrainian Church. Hence, Union with Rome was not firmly established.

On Decembed 23, 1595, Pope Clement VII received two Ukrainian Bishops, Cyril Terletzky and Ipatius Potiy.[1] They were given preliminary instructions and in October 1596 they convoked a Synod of Ukrainian, Lithuanian and White Russian bishops, prelates, and priests at Brest and achieved the long-desired union with the Roman Catholic Church. The Union was signed by six bishops, with Metropolitan Mykhailo Rohoza as their head, and two Archimandrites.

This act of union was an important event in the history of the Catholic Church in Eastern Europe. With the growing menace of expanding Turkish power the Popes were eager to unite all the Christian world against the hordes of infidels. Bringing the Ukrainian Church under their jurisdiction constituted one of the most outstanding steps in that direction. As Bishop Bohachevsky writes of the Ukrainians in his statement—

"* * * in their worship of God such union was traditional. The demoralized state of Orthodoxy, together with its lack of discipline and its disintegration, cause their lament but likewise guided them to unity with Rome." [2]

Vast plans were promptly laid for Catholic action in the east of Europe. This was best expressed by Pope Urban VIII when he wrote to the Ukrainian Bishop of Kholm, Methodius Terletzy: Per vos, mei Rutheni, orientem convertendum esse spero. (I hope that through you, my Ruthenians, the East will be converted.) In the middle of the seventeenth century Carpatho-Ukraine accepted the Union, and in the beginning of the eighteenth, so did the diocese of Lviv and Peremyshl. The untiring pioneers of the Union were such outstanding Ukrainian Catholics as Metropolitans Potiy, Rutsky, the "Martyr of the Union," St. Josaphat Kuntzevich, and the two Ukrainian Cardinals, Levitzky and Sembratovich.

2. RUSSIAN ATTEMPT TO DESTROY THE CATHOLIC CHURCH

The Russian rulers, together with the subservient Orthodox Church, were naturally opposed to the Union. In a period that followed the Russian Government, at different times and in varying degrees, began suppressing the Catholic Church, which they scornfully termed "Uniate." It was the time of rising Russian imperialism, with Moscow, the "Third Rome," the spiritual seat of the ex oriente lux idea. Peter the Great, hostile to Catholicism, did not hesitate to kill a Basilian priest with his own hands. His vituperations against Rome are widely known. He issued the ukases banishing the Jesuit Order, compelling the Catholic Ukrainians to join the Russian Orthodox Church, and subjecting those who were recalcitrant to torture and death. The Russian Orthodox Church then, as today, was the docile instrument of a despotic government. Patriarch Alexei's dictum to the Catholics of Western Ukraine—"Where is the Vatican leading you at the present time. * * * To complicity with the abetter of Fascism"—is, of course, nothing new in the terminology of the Russian Patriarchs.

The reign of Catherine the Great was especially difficult for Catholics. Her manifestos of 1779 started a systematic destruction of the Uniate religious orders. Catholic priests were exiled, and their places taken by Russian Orthodox priests. "Many clergy," writes the Ukrainian writer V. J. Kisilevsky, "were imprisoned, and much brutal force was used. In a few decades of such treat-

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[1] Ukrainian General Encyclopedia, Lviv, 1934, Vol. 3, 919 ff.

[2] Statement of the Bishops of the Ukrainian Catholic Diocese in the United States, April 4, 1946.

ment Catherine II could boast of having "converted" eight million Ukrainians to Orthodoxy, and had abolished 9,316 Ukrainian Catholic parish churches and 145 monasteries."[1] Her destructive policy reached even the Western Ukraine, which, so far, had been outside Russian Church jurisdiction.

Under Czar Nicholas I, a new impetus was given religious persecution in Ukraine. The Catholic College was transferred to St. Petersburg. In 1832 all Basilian monasteries were confiscated, and in 1837 the Czar completely liquidated Catholicism in his Empire. Ukrainian Church Chronicles were reedited by the Russian priests in order to destroy all vestiges of Roman Catholic influence. Religious books were burned and the Holy Gospel was considered illegal literature.

In 1905, when the First Russian Revolution brought some liberties to the subjects of the Czar, the status of the Catholic Church remained unchanged. The Duma, a travesty upon Western parliaments, excepted the Uniates from the newly granted reforms.

The War of 1914, and the Russian invasion of the Western Ukraine, brought the rest of the Ukrainian Catholics, under the rule temporarily, of the Russian Czar. The Russians, faithful to the principle cuius regio, eius religio, immediately started persecution of the Ukrainian Catholic Church. The venerable Metropolitan Sheptytzky was imprisoned and sent to Siberia, where he spent three long years in solitary confinement. He remained there until the outbreak of the Revolution of 1917 and establishment of the Ukrainian independent state.

Mr. Michael Derrick, author of Eastern Catholics Under Soviet Rule, writes about the fidelity of the Ukrainian Catholics as follows:

"What is truly marvelous, the complete justification of the Uniates, the proof of how genuinely religious and unpolitical their Catholicism was and remains, is the resistance offered to all this prolonged and seemingly irresistible campaign to drive them into apostasy. When their priests were either in prison or in exile in Galicia or Siberia, the Ruthenian Catholics practiced their religion secretly with the aid of priests of the Latin Rite * * *."

3. POLISH-UKRAINIAN CHURCH RELATIONS

After World War I, the largest part of Ukraine found itself again under Russian rule, this time the Soviet. Although nominally there is a Ukrainian Soviet Socialist Republic, actual rule is in the hands of the Moscow-controlled Communist Party. Even the Ukrainian Orthodox Church, revived after 1917, was liquidated.

The Ukrainian Catholic (Uniate) Church was able to survive only in the Western Ukraine and Carpatho-Ukraine, these territories being under Poland and Czechoslovakia respectively since 1920.

Paradoxically, Polish-Ukrainian Church relations did not go along a smooth and even path. Even while Poland and its Church were subject to the unscrupulous and ruthless policy of Russia, Polish policy toward the Ukrainian Catholic Church was always deplorable. When, after the Union of Brest in 1596, religious strife broke out in Ukraine, the partisans of Orthodoxy, supported by the Russian Czars, strongly argued that the Union was in the interests of Poland, which, at that time, was pursuing an imperialistic policy in Ukraine, Lithuania, and neighboring states. So closely was Polish nationalism associated with Catholicism that the Union with Rome was unfortunately regarded by many Ukrainians as disguised Polish political action.

During the period between 1920 and 1939 Polish-Ukrainian relations were marked by bitter antagonisms and open persecution by the Polish Government. In 1930, during the so-called "Pacification" of Eastern Galicia, several Ukrainian Catholic priests were beaten and thrown into the notorious concentration camp at Berez-Kaktusa. In 1938, just before the Munich capitulation, the Polish Government organized a campaign against both Ukrainian Churches, the Catholic and Orthodox. In some localities the Ukrainian Churches were razed by the Poles. The Warsaw Government behaved in an unpardonable manner when, in the summer of 1938, it "confiscated" 112 Ukrainian Orthodox Churches in Volhynia and Polesie on the pretext that these had been unlawfully taken from the Uniates under the Czars, Metropolitan Sheptytzky issued on that occasion a strong Pastoral Letter, saying:

"The shocking events of these last months * * * compel me to arise in public in defense of our persecuted brethren of the nonunited Orthodox Church

[1] Eastern Churches Quarterly, July 1937, London.

* * * The Orthodox Church is veiled in sorrow * * * We must painfully feel the sufferings of our brethren, and must brand these anti-Christian acts" [1]

The Letter was confiscated by the Polish Government and did not reach the Catholic faithful of Western Ukraine. There were other such acts by the Polish Government, as, for instance, replacing the Latin and Ukrainian languages by Polish on birth certificates issued by the Ukrainian Catholic parishes.

No doubt politics were a constant obstacle to achievement of a real modus vivendi between the Polish and Ukrainian peoples. But, in all fairness, what the Ukrainian Catholics underwent during the Polish rule is not to be compared with the sanguinary ordeal under the iron rule of Stalin and Molotov.

Today, perhaps, the Poles, with their Church and country under the ruthless domination of the Soviets, are painfully aware of their erring policies toward the Ukrainians and their Church.

Ukrainian Catholic Church Under the Two Totalitarian Powers

1. German-Russian partition of Poland and the Ukrainian Catholic Church

On September 17, 1939, the Red Army crossed the Eastern frontiers of the already dying Poland. The Moscow radio broadcast a statement of Mr. Molotov in which he declared that the Red Army is going to "liberate blood brothers, the Ukrainian and White Russian peoples from the yoke of Polish masters". He did not say, however, that spheres of influence of Nazi and Bolshevik totalitarian powers had been pre-arranged between Molotov and von Ribbentrop. Poland fell the first victim of aggression, and with her seven and one-half million Ukrainians, of whom five million were Catholics. Hundreds of thousands of them, fearing ruthless persecution by the NKVD and the Communists, fled to the "Government General of Poland" and to other countries of Central and Western Europe.

But the bulk of these five million Ukrainian Catholics remained in their native land, apprehensively awaiting the "liberatos."

2. The first Soviet occupation: September 1939–June 1941

According to several Ukrainian and Polish refugees who witnessed the first Soviet occupation of Western Ukraine, the Soviet authorities had a definite policy toward the Ukrainian Catholic Church and its priests; cautious hostility. There are several possible explanations of that policy. Stalin was still playing his strategic security game", not knowing whether his alliance with Hitler would succeed, or whether he might not ultimately come to an agreement with the Western "degenerate democracies". Nonetheless, Soviet politruks (political agents) were convoking mass anti-religious meetings in which anti-religious resolutions were read and passed "unanimously." They requested the Soviet state to "liberate the masses" from the clerical yoke. But all these efforts were of no avail. The entire Ukrainian population remained united for, and not against, their Church. All showed great courage and determination in defending the Catholic faith.

The Metropolitan Sheptytzky was then still alive, enjoying great prestige and esteem among the people, including Poles and Jews. Metropolitan of the Ukrainian Catholic Church since 1900, he was a pillar of Catholicism. He had comprehensive plans for Catholic action in the East of Europe, eventually paying for them with a three-year imprisonment in Czarist jails. The Soviet commissars with their hatred for religion in general, and for the Catholic Church in particular, did not dare to attack this venerable Catholic. The NKVD men made more than one searching raid on his palace in Lviv, confiscating his property, numerous archives, libraries. But he, like his priests, was supplied with the necessities of life by the faithful. In a Pastoral Letter in 1940, which the efficient NKVD was unable to withhold from circulation, he bitterly assailed atheistic Communism and the persecution of the Ukrainian people. His brother, a Bisilian Father, was executed by the NKVD. Other heroic deeds of Metropolitan Sheptytzky are too numerous to mention here.

At the end of 1940 and at the beginning of 1941, the Soviet authorities stepped up their persecution of the Ukrainian Catholics. Hundreds of priests were exiled to Siberia, and a good number of them executed. The lay Ukrainian intelligentsia paid heavy toll: all former members of the UNDO party, one of the largest in

[1] Eastern Catholics Under Soviet Rule, p. 22.

Poland, which at one time had seventy-five members in the Warsaw Parliament, were arrested, exiled, and executed. All libraries, *Prosvita Societies*, thousands of cooperatives and dairies—held second only to the Danish—were liquidated.

When the Germans attacked the Soviet Union on June 21, 1941, the retreating Soviet troops and the NKVD committed mass murders of Ukrainian Catholics in such cities as Strey, Drohobych, Stanislaviv, Lviv, Tarnopol. Scenes of horror were reported by American correspondents who covered the German campaign in Western Ukraine. Among hundreds of murdered Catholic priests were Father Conrad of Lviv, doctor of philosophy and prominent writer; Father Ischak, internationally known authority on Eastern Churches.

The Russians behaved themselves with traditional ruthlessness, so far as shooting of their own prisoners was concerned. This is attested to by Mr. V. Kravchenko in his book *I Chose Freedom.*

3. THE GERMAN OCCUPATION: SUMMER, 1941—SUMMER, 1944

The first step of the Ukrainian Catholic Church which aroused the new invader of Ukraine, Nazi Germany, was its blessing bestowed upon the Ukrainian patriots who, on the eve of the Germans' arrival, gathered in Lviv and proclaimed the independent Ukrainian Republic. The Nazi party and the Gestapo were quick to show the Ukrainians that they came to Ukraine to be the "master race." The leaders of this movement, Stephen Bandera and Yaroslav Stetzko, were sent to a concentration camp near Berlin, and all other members were bitterly persecuted for their vast underground movement directed against the Nazis.

Metropolitan Sheptytzky gained even greater prestige among both Catholic and Orthodox Ukrainians by his resolute stand against the German invader. In 1942 was issued a notable Pastoral Letter in which he condemned the inhuman treatment of the Jews by the Nazis. The Gestapo raided his palace and the St. George Cathedral in Lviv, and it is rumored that only intervention of Erich Koch, German Commissioner for conquered Ukraine, saved the Metropolitan from arrest by the Gestapo.

A Second Pastoral Letter, issued in 1943, was directed against wholesale conscription of Ukrainians for slave labor in Germany. These deportations increased before the German retreat. More than three million Ukrainians were deported to Germany, and although the majority of them were from the Soviet Ukraine, the Catholics of Western Ukraine were heavily represented with hundreds of thousands. Nevertheless, only nineteen Catholic priests were allowed to go with the deportees to serve their spiritual needs. The work of these priests under Reverend Peter Verhun was greatly hampered by the German authorities. Father Verhun was promptly arrested by the NKVD when the Russians entered Berlin, and has not been heard of since.

When the final *Gotterdämmerung* came the Gestapo arrested hundreds of Ukrainian Catholic priests; some of them were sent to Dachau or to Oswiecim. The Ukrainian Catholic Church was hostile to the German domination of Ukraine, and the Germans, "preaching their Messianism of the West," were never able to enlist the assistance of the Catholic Church. This fact is all the more important because the Moscow radio, a few weeks ago, announced that Metropolitan Slipy, successor of Metropolitan Sheptytzky, is not dead, as reported, but awaits trial by the military tribunal as a "war criminal" in a Kiev prison.

Bolshevik Pogrom Against Ukrainian Catholic Church

1. YALTA AGREEMENT AND WHAT FOLLOWED

The war against the Nazis was still in full intensity on both Western and Eastern fronts, when decisions of tremendous importance were reached at Yalta. The late President Roosevelt and Prime Minister Churchill made far-reaching compromises for Stalin's benefit; the Atlantic Charter was apparently put aside in allowing the Soviet Union to annex the Western Ukraine, the Baltic States, etc. This was purely territorial aggrandizement on Soviet Russia's part. The territory of Western Ukraine, as we have pointed out, never belonged to any Russian state. Ukraine could have claimed this part of her territory were she free and independent, but she herself is merely a slave of the Russian Communists.

The second accepted principle subsequently disregarded by the Russians was that of political asylum. If it is true that Stalin at Yalta received assurances all his political enemies, proven or potential, would be handed over by the Western democracies, then a violation of moral principle was involved. Cardinal

Tisserant denounced the Allies for this reported secret deal. Defending the displaced Ukrainians and others who faced forced repatriation to their Soviet-dominated countries, he said:

"I have seen what I was told was a true copy of that agreement made at Yalta. I cannot disclose the identity of the person who showed it to me, but I have every reason to believe him. The agreement provided for the return of persons who left Soviet territory since 1929, but refugees tell me that they are being sent back at the whim of military authority." [1]

2. SECOND SOVIET INVASION OF WESTERN UKRAINE, SUMMER, 1944

Several events of international importance occurred before the final Russian onslaught against Western Ukraine and Poland. There was the well-known Russian game with the Polish Government-in-exile in London; the affair of the murder of 10,000 Polish officers at Katyn Wood; the heroic uprising in Warsaw by General Bor–Komorowski in August 1944, and his betrayal by Marshal Zhukov; and last but not least the abandonment of General Draja Mihailovich by the Allied Powers in favor of the Communist exponent of Stalin in Yugoslavia, Tito.

While Stalin and Molotov were driving a hard bargain apropos the so-called "Curzon Line" and the Ukrainian territory, important and significant "changes" were taking place in Ukraine. Moscow radio announced that "due to the heroic struggle of the Ukrainian and White Russian peoples against Fascist Germany," Ukraine and White Russia would be given vast national "concessions." Nominally independent, Ukraine was to have her own foreign ministry and soon to become a member of the United Nations. Well-known Ukrainian Communist writer Alexander Korneichuk, author of the plays Bohdan Khmelnitzky and The Front, became "Foreign Commissar" of Ukraine. He married the Polish Communist writer, Miss Wanda Wasilewska, a member of Polish Stalin-sponsored Lublin Government. With the Comintern dissolved a year ago, the Allies took all these superfiicial changes within the Soviet Union at their face value.

With respect to the Church great strides have been made by Stalin. The Moscow Orthodox Patriarchate was reestablished, together with a new propaganda slogan to the effect that there is "freedom of religion" in the Soviet Union. Since the war could not have been considered won as yet, the Soviet Government had to play with the nationalist traditions of Western Ukraine and other countries about to fall under Stalin's domination.

In January 1945, when von Rundstedt's offensive in Belgium was completely broken and our armies were racing to the Rhine, Stalin had no doubt as to the issue of the war. He saw in Soviet victory the "historic justification and rehabilitation of Communism," as he proclaimed at the 21st anniversary of Lenin's death.

At a new Sobor of the Russian Orthodox Church, gathered in January 1945, in Moscow, Alexei was elected Patriarch. He was a nominee of the Soviet Government and a personal friend of Stalin. In his mouthpiece, the Journal of the Moscow Patriarchate, Alexei had already showed himself hostile to Western civilization, and an intransigent enemy of the Holy See.

3. UKRAINIAN CATHOLIC CHURCH FACES NEW ORDEALS

On November 1, 1944, death claimed Metropolitan Sheptytzky at his palace in Lviv. He died a worn-out man, cared for by his faithful priests and bishops and also by Polish Archbishop Twardowski (reported later dead in a Soviet prison). Since 1900 he had been unquestionably leader of his people. He was buried in a crypt of St. George Cathedral. Ukrainian clerical reports say that the people paid the expenses of his funeral. Others, however, report that the Soviet Government paid these expenses, and that the Ukrainian Soviet Government was represented by Mikita Khruschov, Secretary of the Ukrainian Communist Party and member of all-powerful Polit-bureau in Moscow. According to these unconfirmed reports he laid a wreath on Metropolitan Sheptytzky's grave on behalf of Stalin himself.

The new Metropolitan of the Ukrainian Catholic Church was Most Reverend Joseph Slipy, a close associate of the late Sheptytzky. He was confronted with the difficult task of saving his Church and people from the bloodthirsty semi-Asiatic hordes who were pursuing the beaten Wehrmacht. The Soviet attitude during the first months of occupation was that of cautious and watchful waiting. True, priests were being arrested here and there, and some were executed

[1] New York Times, March 6, 1946.

for "collaboration" with the Germans. But on the whole the Catholic Church was temporarily left in relative peace.

In April 1945, the all-out offensive against the Ukrainian Catholic Church began. The military situation was all in favor of Stalin's decisive move. The American armies had crossed the Rhine, while the Russians were at the outskirts of Berlin. The "Ukrainian" Armies of Malinovsky, Konev, and Telbukhin were in Austria, Czechoslovakia, and the Balkans. Meanwhile in San Francisco the first conference of the United Nations opened. To it the "independent" Ukraine and White Russia were admitted. Thus we had evidence of questionable compromises at Yalta. Stalin, evidently, had all the blue chips in his hands.

A vast campaign against the Catholic Church in the Western Ukraine got under way when two Orthodox Bishops arrived in Lviv, accompanied by great number of Orthodox priests. Reports are current that these clerics where schooled by the NKVD, attend the Red Army's officer mess and clubs and conduct themselves in the same manner as the Russian officers in other occupied countries, especially so far as women are concerned.

The Catholic Church was denounced in the press in Kiev and Lviv, and other Ukrainian cities. The Pope's Christmas allocution on "True and False Democracy" was bitterly attacked and he was labeled "abetter of Fascism." In April 1945, an article entitled "With Cross and Knife" by Volodymyr Rosovich appeared in the Communist papers Free Ukraine in Lviv and Soviet Ukraine in Kiev. The article attacked the late Metropolitan Sheptytzky as the "servant of reactionary Rome." Its writer stated that Soviet patriotism found its expression in the revival of the Russian Orthodox Church. He asserted that the Greek Catholic Church and its clergy in league with the Vatican were supporting the Ukrainian underground movement against the Soviet system, and therefore could not be tolerated.

Following these verbal sallies actual physical attack began. We reproduce here eyewitness reports printed in the publication For An Independent State (No. 9–10), which appears clandestinely despite the Soviet dictatorship:

"On April 11, 1945, a special detachment of NKVD troops surrounded the St. George Cathedral in Lviv. After a thorough search, according to the best methods of NKVD, the following were arrested: Metropolitan Joseph Slipy; Bishops N. Budka and Mr. Charnetzky; the Prelates, Rev. O. Kovalsky and Rev. L. Kunitzky; Rev. Gorchynsky, Rev. V. Beley; Rev. S. Sampara, Rector of the Theological Seminary, and his Administrator, Rev. J. Trush; Rev. R. Bilyk, Director of a Catholic School, and Rev. J. Hodunka, who after brutal tortures died in prison a few days after his arrest. The students of the Theological Seminary were rounded up and put in a camp at Pieracki Street. All professors of the Theological Seminary were herded to a meeting organized by the NKVD and informed that the Ukrainian Greek Catholic Church had ceased to exist, that its Metropolitan was arrested and St. George Cathedral would be taken over by the Orthodox Bishop appointed by the Soviet authorities. During the search the NKVD men conducted themselves in a brutal manner, taking all gold and silver objects, liturgical wine, etc."

This happened but two weeks before the opening of the San Francisco Conference, where Russia and Ukraine were hailed as bona fide supporters and builders of a hard-won peace.

The raids were going on throughout the Western Ukraine. All Ukrainian Catholic bishops were arrested. In Lviv, besides Metropolitan Slipy, two bishops were apprehended: Mgr. Mikola Charnetzky, Titular Bishop of Lebedus and Redemptorist Apostolic Visitor in Volhynia, and Mgr. Niketa Budka, Titular Bishop of Patara, Ordinary for Catholics of Byzantine Rite.

In Stanislaviv, the NKVD arrested Bishop Gregory Khomyshyn and his Auxiliary Bishop, Mgr. Latyshevsky, Titular Bishop of Adada. Bishop Khomyshyn, an old man of 78, died in a train on his way to prison in Kiev. His secretary, Father Galant, was tortured to death. Bishop Latyshevsky was reported dead later.

In Peremyshl, which nominally does not belong to the Ukrainian Soviet Republic but rather to the Poland of Bierut & Co., the NKVD arrested Bishop Josaphat Kocylosky[1], together with his Auxiliary, Bishop Gregory Lakota,

[1] The Ukrainian Press Service in London reports that Bishop Kocylovsky of Peremyshl Diocese, has returned to his See City after having been held by the Polish Secret Police in Rzeszow prison. The Polish authorities under Russian pressure, tried to force the Bishop to go to the Socviet Ukraine, since Peremyshl is west of the Curzon Line. Bishop Kocylovsky is reported to have refused, saying: "Rome placed me at Peremyshl, and only Rome can recall me from there."

Titular of Daonio, subsequently reported dead in a Kiev prison. The only unharmed Bishop of the Ukrainian Greek Catholic Church, besides Bishop Bohachevsky and Bishop Senyshyn who are in the United States and Most Rev. Volodymyr Ladyka, Bishop Ordinary and Apostolic Exarch of the Ukrainians, and Most Rev. Neil Nicholas Savaryn who are in Canada, is Bishop Ivan Buchko, Auxiliary of Lviv Diocese, at present in Rome.

All Polish Bishops, east of the "Curzon Line," have also been arrested. Archbishop Twardowski died at the age of 81, in a Soviet dungeon. No one knows the fate of Bishop Szelasek, Bishop of Lutzk, or Bishop Baziak, Auxiliary of the Latin Diocese of Lviv.

General Bor-Komorowski, leader of the ill-fated Warsaw uprising during the Summer of 1944, told this writer in an interview that Bishops of both Latin and Eastern Rite, east of Curzon Line, have simply disappeared.

After the pogrom against the Ukrainian Catholic Hierarchy the Russians went on to liquidate the lesser clergy. When news about the arrests of the Catholic Bishops spread, the Ukrainian Catholic priests, 500 of them, gathered at Lviv, to protest. The NKVD broke up the meeting and killed many of those in attendance. The others were arrested and are unheard of since. The Catholic Church was subjected to heavy persecution by the NKVD; no services were permitted without its special authorization.

A month later, in an undated document called "To the Priests and Faithful of the Greek Catholic Church in the Western Ukraine", Patriarch Alexei "invited" the Ukrainian Catholics to apostasy. His language was purely political and polemical in a tone hitherto unknown to any Church. For instance, he encouraged people to hate their enemies bitterly. After having stated falsely that the Russian Orthodox Church is "mother" of the Ukrainian Catholic Church, Alexei emits such words of eloquence as:

"Now to what have the Metropolitan Sheptytzky and his colleague exhorted you? They have invited you to submit yourselves to the yoke of Hitler and to bow your heads before him. *Where is the Vatican leading you at this present time, by the Pope's addresses at Christmas and at the New Year? To complicity with the abetters of Fascism and to mercy toward Hitler, the greatest scoundrel the world has ever seen.*" [Italics added.]

Subsequently, his official publication, the Journal of Moscow Patriarchate, printed a series of violent articles against the Vatican and Pope Pius XII.

It was the letter of Alexei which His Holiness the Pope had in mind when in the Encyclical Orientales Omnes Ecclesias he wrote:

"With grief We learn that in the regions which lately passed under Russian authority, Our dear brethren and children of the Ruthenian people are afflicted with great distress because of their fidelity to the Apostolic See. There is no lack of persons who are working with every means to entice them from the bosom of Mother Church and induce them to enter the community of the dissidents, against their own desire, their conscience and their sacred duty * * *. Who does not know that the Patriarch Alexius, recently elected by the dissident Russian Bishops, in a letter addressed to the Ruthenian Church, openly advocates and preaches its defection from the Catholic Church—a Letter which has notably contributed to the development of this sort of persecution. * * *"

Pope Pius XII referred to a special paragraph of the letter, that part, namely, where Stalin's man calls upon the Ukrainian Catholics in these words:

"*Break, tear the bonds which bind you to the Vatican; by its habitual ways it is leading you into darkness and into spiritual ruin; at this time it wishes to make you turn your backs on the whole world, in arming you against freedom-loving men.*" [Italics added.]

The last phrase apparently means "Stalin's freedom." No ecclesiastic in any religion or rite would use such profane and base language; Alexei's language is the parlance of the Russian secret police, the NKVD.

4. PREPARATION FOR APOSTASY

Meanwhile the Russian secret police and special agents were working in towns and villages of Western Ukraine. The very existence of the Ukrainian Catholic Church was left to the discretion of the local NKVD men. Brave priests who continued to exercise their duties were heavily fined or arrested on the slightest pretext.

One of those arrested was Rev. Dr. Havriil Kostelnyk, well known in Ukrainian ecclesiastic circles. In 1936 he had written a pamphlet Ideology of the Union (1596), in which appeared the following:

"Schism in the Church should be removed. The original Catholic Church, Eastern and Western, should be restored under the primacy of the Holy See of the Roman Bishop-Pope." [1]

While he was in prison, the Lviv radio accused his two sons of having been in the German army. Father Kostelnyk himself was called "enemy of the people." But after a sudden release, he and two other priests, Rev. M. Melnyk and Rev. A. Pelvetzky, organized a "Committee of Initiative for the Transference of the Greek Catholic Church to Orthodoxy." Scores of other priests, among them Father Kladochny, are reported as having refused to join the "Committee of Initiative."

On May 28, 1945, a few weeks after V-E Day, the above-mentioned priests issued a letter addressed "to the Reverend Fathers of the Greek Catholic Clergy in the Western Province of the Ukraine," which, in contents and style, was identical with the letter addressed previously by the Moscow Patriarch Alexei. The Union of Brest was criticized as an instrument of Polish imperialism and international (Roman) reaction. A great deal of praise was given to the "incomparable and brilliant" First Marshal Stalin for his services to the Ukrainian nation and, indeed, mankind. The Catholic clergy was urged to join the "Committee of Initiative," because "State authority will recognize only the steps taken by the Committee of Initiative, and will not recognize any other administration of the Greek Catholic Church." The letter urged the Catholic clergy to join the apostate group, "because they will need government-issued certificates in order to conduct their Church affairs."

On the same day, May 28, 1945, Free Ukraine, Communist daily published in Lviv, printed a petition, signed by the same three priests, "To the Council of People's Commissars of the Ukrainian Society Socialist Republic." As in previous letters and petitions, the next did not deal with ecclesiastic issues, but was, indeed, a political assurance of loyalty and submission to Stalin and his men in Ukraine.

One June 18th, 1945, the Soviet Government sent its reply to the apostate group. Although their petition was addressed to the Ukrainian Soviet Government, the answer came from "the representative of the Council of People's Commissars for the Affairs of the Russian Orthodox Church on the Council of People's Commissars of the Ukrainian S. S. R." In order to acquaint the Western mind with the methods used in the Soviet Union in regard to the Church, we reproduce the document at length [2] [italics inserted]:

To the Members of the Committee of Initiative for Transference of the Greek Catholic Church to Orthodoxy, Dr. Kostelnyk, Dr. Melnyk and Dr. Pelvetzky:

In reply to your declaration of May 28th, 1945, and conforming with the instructions of the Council of People's Commissars of the Ukrainian S. S. R., I communicate to you the following:

1. The "Committee of Initiative" for the reunion of the Greek Catholic Church with the Russian Orthodox Church, headed by you, *is recognized officially as the sole juridico-ecclesiastic and administrative body having the right to control without reservation the Greek Catholic parishes of the Western Ukraine and promote their Union with the Russian Orthodox Church.*

2. This "Committee of Initiative" has the right to direct those parishes in agreement with the representatives of the Council of People's Commissars for the Affairs of the Russian Orthodox Church on the Council of People's Commissars of the Ukrainian S. S. R., and, as the case may be, in the districts in agreement with local representative.

3. *As the registration of Greek Catholic deaneries, parishes and religious houses proceeds, the "Committee of Initiative" will send to the representative of the Council of People's Commissars of the Ukrainian S. S. R., the list of deans, priests and superiors of religious houses who refuse to submit themselves to the "Committee of Initiative for the Transference of the Greek Catholic Church to the Orthodox Church."*

(Signed: The representative of the Council of People's Commissars for the Affairs of the Russian Orthodox Church on the Council of People's Commissars of the Ukrainian S. S. R. June 18th, 1945.

—P. KHOTCHANKO.

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[1] Statement of the Bishops of the Ukrainian Catholic Diocese in the United States, April 4, 1946.

[2] Freedom of Conscience Under the Bolsheviks, Foreign Department, Ukrainian Underground Movement, 1946, p. 16.

These documents, as the reader will see, are political rather than theological in character. Comrade Khotchanko ordered a list made of all these "deans, priests and superiors of religious houses who refuse to submit themselves to the "Committee of Initiative"! What would happen to those who did not follow Dr. Kostelnyk and this group? In a state supremely despotic there is but one measure of "proletarian justice"—execution as "enemy of the people."

And yet, even such pressure did not force the faithful Ukrainian Catholics to submit.

Out of a total of 3,600 Ukrainian Catholic priests only 42 had submitted to the "Committee of Initiative" by the end of June 1945!

As soon as these letters of the Rev. Kostelnyk and his associates became known, more than 300 Ukrainian Catholic priests gathered at St. George Cathedral in Lviv, to protest against this unbelievable usurpation of man's conscience. They addressed a letter, not to Dr. Kostelnyk or Comrade Khotchanko, but to Foreign Commissar V. Molotov. With restraint they stressed their loyalty to the Soviet Ukraine and the Soviet Union. They wanted to take care of their people's souls, which could not but be beneficial for Church and State. This document, striking in dignity and wholly different from the others issued by the Soviet Government or its emissaries, will long be an example of the spiritual greatness of free men. These priests pointed out that freedom of religion finds guarantee in the Stalin Constitution, and that religion is respected all over the world. They requested, therefore, the release of their Metropolitan, their Bishops and "a great number of priests." Here is the document in full: [3]

To V. M. Molotov, People's Commissar for Foreign Affairs:

Following arrest of the whole Episcopate and a great number of priests of the Greek Catholic Church in Western Ukraine, and in consequence of a prohibition vetoing all direction by our own clergy, Our Church found herself in a very abnormal situation.

This situation is further complicated by a fact that there has been set up in Lviv a "Committee of Initiative" for uniting the Greek Catholic Church with the Orthodox Church. This Committee headed by Rev. Dr. H. Kostelnyk of Lviv, Rev. Dr. Mikhailo Melnyk of Drohobych (Peremyshl Diocese) and Rev. A. Pelvetzky of Stainislaviv, has published an appeal *To the Reverend Clergy of Western Ukraine*, dated May 28th, 1945, and signed by the above-named priests.

We ourselves, priests of the Catholic Church, will not reply to the historical inexactitudes contained in this appeal; the facts in question are known to all. In the present letter we want simply to state our own position toward the Soviet Union and to lay our petition before the Government.

We would ask the Government to observe, in the first place, that we profess, and intend to profess, the most pure patriotism to the Ukrainian Soviet Socialist Republic and to the Soviet Union, and that we intend to fulfill conscientiously our duties to the State. *We will not on any account engage in any activities of political nature, but will devote ourselves to the work of saving our souls and those of our people. We think that such a work will bring benefits not only for the Church but for the State as well.*

Our attitude to Dr. Kostelnyk's initiative is completely negative. His actions we condemn as detrimental, as entirely opposed to the tradition of the Church, and as contrary to the Truth proclaimed by Christ: "There shall be one fold and one shepherd." It is, therefore, evident that we cannot listen to a voice which incites us to apostasy from the Faith. *A situation such as that which at present exists may rapidly lead to one of those religious wars, which as history shows, can bring nothing but loss, not only to the Church, but to the whole nation.*

Therefore, we request the Government to release our Bishops, in the first place, our Metropolitan. And, while awaiting their liberation, we ask the Government to grant us the right to regulate all questions regarding our Greek Catholic Church. We further ask, that, until the release of the Metropolitan and Bishops, a canonically legal organization may administer the ecclesiastic province of Lviv-Galicia. We want to believe that the Government will receive this request favorably and come to our assistance, since the Stalin Constitution guarantees to all citizens of the U. S. S. R., including ourselves, liberty of conscience and religious practice.

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[3] Freedom of Conscience Under the Bolsheviks, Foreign Department, Ukrainian Underground Movement, 1946.

We know that the Revolution of 1917 was in the name of high principles, and we believe that these ideals of freedom are respected today and practised in the whole world.

We don't believe that the Government wants to persecute us for our Faith and we consider the action of the "reunion with Orthodoxy," as a misunderstanding, as an act *sui generis*, of minor or major officials.

Therefore, in the name of justice, in the name of the glorious victory of the Soviet Union, we ask for ourselves, and for our people of Western Ukraine, that liberty of ecclesiastic administration which we have enjoyed during the centuries, and to which, according to Soviet law, we have the right.

LVIV, ST. GEORGE'S PLACE, NO. 5, *July 1st, 1945.*

What were the results of this eloquent appeal?

5. STALIN-MADE APOSTATE "SYNOD" IN LVIV

All signatories of this petition were arrested and accused of "sabotage," and violation of state laws involving security. From fully reliable sources detailed information is available as to the resulting persecution of Ukrainian Catholics en masse. Clergy and laity were killed by the hundreds, countless numbers were beaten, and thousands of others were forced into slave camps or deported to Asia and Siberia. Whole villages were uprooted, families were deliberately divided; husbands and fathers were sent to the impenetrable regions of Siberia, wives and mothers to brick factories in Turkestan. Children were collected into Communist child centers. But thousands fled into the hills and mountains to join underground forces, and many others scattered throughout Germany, Italy, Austria, France, and elsewhere, there to join the thousands of Ukrainian DP's already under American, British, and French occupation government.

More and more names of Catholic priests executed are coming to light. After Japan surrendered the Russian persecution increased in intensity and quantity. Several young Ukrainian priests, former students of Rome and Innsbruck theological colleges were put to death. Such cities as Sambir, Drohobych, Zolochiv, Dobromyl, were scenes of mass murder of Catholic priests and laity.

On June 29th, 1945, the Czechoslovakian Government of Benes and Fierlinger ceded Carpatho-Ukraine, or Ruthenia, to the Soviet Union. The dreaded NKVD at once started a manhunt in this poor and mountainous region. The fate of these Catholics was no different from that of their brother Catholics in Galicia. The local Soviet Commissar, Ladislaus Tudosi, with one decree confiscated all Catholic churches, monasteries and properties.

Cardinal Tisserant, whom we have already quoted, made the following accusations against the Russians to the Rome correspondent of the New York *Times*, March 1st, 1946:

"Priests, religious orders and sisters are being deported systematically, with more than one-fifth of the 2,000 of Ruthenian Dioceses already banished into Asia.

"Ukrainian Catholics in lower Carpathia have suffered by confiscation of Catholic property by the State, and suppression of Catholic Schools. Sermons are censored, priests deprived of their means of livelihood and forced to seek manual labor to live.

"Communist propagandists holding meetings in villages to urge the Catholics to join the Othodox Church of Moscow. Priests resisting similar pressure, are labeled "enemies of the people".

"The Seminary of Mukachevo, 180 miles northeast of Budapest, has been robbed of its buildings.

"The Basilian Fathers have lost all their houses and institutions and more than thirty have been arrested and nothing has been heard of them since."

The Bulletin of the Catholic Association for International Peace, May 1946 issue, reports:

"Bishop Theodore G. Rhomza, the only Catholic Ruthenian Bishop of the Byzantine-Slavonic rite who has had even a limited amount of freedom, has been arrested and deported to parts unknown. Much of the Church property in his diocense, including the Cathedral, has been seized and handed over to Moscow-dominated Schismatic Orthodox Church."

Cardinal Tisserant cites the Encyclical issued by the Pope on January 19, 1946, in which he said: "For the Ruthenians the matter is reduced to this dilemma: either schism or martyrdom; and martyrdom means arrests, deportation into Asia, prison, forced labor and death."

In the Western Ukraine, meanwhile, great numbers of NKVD agents and political agitators, headed by such Ukrainian Communist writers as Bazhan (later Soviet Ukraine's representative to the inter-Government Commission on DP's in London!), Tychyna, Rylsky, Vyshnia, and others, were terrorizing the Ukrainian population and forcing them to accept Orthodoxy of Stalinist make.

Finally on March 8th, 1946, a "Synod" attended by 216 Ukrainian priests, and headed by Dr. Kostelnyk, Dr. Melnyk and Dr. Pelvetzky, "officially" proclaimed the "reunion" of the Ukrainian Catholic Church with the Russian Orthodox Church. The three apostates were nominated "Bishops" by Patriarch Alexei's man, Archbishop Macarius of Kiev, known as Mikhailo Oksaniuk.

There was no one to oppose this farcial and yet so tragic move. All recusants, according to the instruction of Comrade Khotchanko, were physically removed from their parishes and deaneries. A great majority of them became modern martyrs for their beloved Catholic Church.

The "Synod" did not fail to send the following communication to the actual head of the Russian Orthodox Church, Joseph Stalin:

"The Council of the Ukrainian Greek Catholic Church in Western Ukraine gathered in Lviv on March 8th, 1946, has resolved to revoke the Brest Union with the Vatican from 1596 and to return to the bosom of the ancestral Russian Orthodox Church, the light of which emerged from Kiev, the historic cradle of the Russian, Ukrainian and White Russian nations. We are happy to be able to entreat you, oh Leader of the Great Soviet Union, to consent to accept this report together with expressions of our happiness that henceforth nothing will ever divide our unified Ukrainian nation. In this historic and epoch-making moment we feel obligated to express our deep gratitude to you for the great act of unifying the Ukrainian lands into one. Without this unification it would not have been possible even to dream of liquidating the disunity in our Church and in our religion.[1]"

The Holy See and the Ukrainian Catholic Bishops of the United States declared this "Synod" illegal and its decisions invalid. According to canon law, only bishops have the right to convene such ecclesiastic meetings. There are reports that among 216 "priests" attending this "Synod," the majority were the Russian NKVD agents disguised as Catholic priests.

The Ukrainian Catholic Church, veritable ante-murale Christianitatis, is going through a crucial and trying period.

In other Catholic countries now under the aegis of enslaving Bolshevism, Church conditions vary according to local situations. Yet the NKVD has a far-reaching arm. The basic philosophy of Russian Communism as regards the Church has not been changed; on the contrary, the violence with which the Russians persecute the Ukrainian Catholic Church indicates the mounting fury of these dark forces of materialistic totalitarianism.

Bernard Cardinal Griffin, at a special mass of intercession at Westminster Cathedral, implored: "We invite all who would proclaim the sacred rights of men and his personal, religious, and political liberty to join us in protesting against the brutal treatment meted out to those who fought that men be free"—(New York Times, March 25, 1946).

General Tadeusz Bor-Komorowski, leader of the Warsaw uprising against the Nazis, declared that the Catholic Church in Poland is greatly hampered by the Polish Security Police, which is under direct control of the NKVD. Both Polish Cardinals, Hlond and Sapieha, are beset by difficulties, while the only Catholic paper Dziennik Katolicki, is limited in its circulatoin. General Bor stated that, after the liquidation of Mikolajczyk's Peasant Party, the Catholic Church will be the first victim of the Russian forces in Poland.

In Hungary the Catholic Church and its Cardinal Mindszenty are officially declared "enemies of the people." The government circles, under Russian instigation, did not hesitate to put the Cardinal in prison.

Tito's rule over Catholic Croatia and Slovenia is one organized pogrom against the Catholic Church. Separation of Church and State and suppression of religious institutions have been voted by Tito's parliament. Bishop Gregory Rozman of Liubliana is under constant threat of arrest. A few months ago Tito's military tribunals condemned five Yugoslav nuns to death for alleged complicity in a murder involving Communist Partisans.

In Croatia, in February 1946, the prisons were full of Catholic priests. Archbishop Stepinac is under constant supervision of the OZNA, Tito's version of the NKVD. His publication, Narodna Tiskara, was suppressed.

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[1] Ukrainian Press Service, London, March 1946.

In Czechoslovakia, especially in Slovakia, anti-Catholic persecutions are of daily occurrence. The Czech Government is more often than not a willing partner of the NKVD.

The Baltic Catholics since 1940 have been under a brutal police system, successively NKVD and Gestapo, and now again under the NKVD.

The tragic history of the Ukrainian Catholics indicates what is in store for the Catholic Church all over the world, if the Russians extend their destructive policy in Asia, to Western Europe, to South and North America. There is no alternative for them, but to do what they are doing in Ukraine. Their materialistic philosophy will tolerate no other. The brutality will only be increased because their hatred for the "decadent West" is bottomless.

Documents Pertaining to "Apostasy"

Document I: The Patriarch of Moscow Alexei to the Ukrainian Catholics in April 1945, Inviting Them to Betray the Roman Catholic Church

To the Pastors and Faithful of the Greek Catholic Church in the Western Ukraine

Very Dear Fathers, Brothers and Sisters in Christ: On February 2 of this year the Sobor of the Russian Orthodox Church raised me to the dignity of Patriarch of Moscow and of All Russia. In this capacity I cannot refrain from making the voice of my fatherly affection heard to you. Since ancient times you have been tied to Russia and to her people by language and your ancestral customs. Now Divine Providence has restored to Russia her ancient frontiers; you are henceforward with us for ever.

It would be an inexpressible happiness for me and for all the Russian Orthodox Church if we were able to live this historic time with you, not only in the same spirit but in the same common prayer in our holy churches, wherein, with one mouth and with one heart, we would praise and give thanks to the Lord, the source of all good. Unhappily, we are unable to recite this common prayer with you. During the period when they were detached from Russian soil, your ancestors were also detached from their Mother, the Russian Orthodox Church; and, under foreign influence, your ancestors, and you, their descendants, accepted the spiritual guidance of the Pope of Rome and adhered to Catholic dogmas which degrade the primitive purity of Greek Orthodoxy. The Orthodox rites which you retain in the liturgy bear eloquent testimony to your ancient attachment to the Orthodox Church, but they have no longer her spirit and they no longer nourish the faithful with divine grace; for, as a leaf broken from its branch cannot live, so a spiritual community of the Church which is detached from the unity of Orthodoxy loses contact with the apostles and with the transmission of grace.

As your Father, I can only lament over such a situation. See, dear Fathers and Brothers, where this spiritual direction has led you in the historic time in which you are living. Hitler, preaching hatred among men, according to his Fascist doctrine, and cherishing the senseless desire to exterminate the Slav peoples, and all the other peoples of inferior races, as he calls them, according to the Fascist theory—Hitler dreams of conquering the world. All that is best in mankind, all honest men and friends of progress, rose up against this bloodthirsty madman. God visibly blesses the arms of those who fight against Hitler and Fascist in the defense of the liberty, peace and prosperity of mankind. The finger of God points for the world to see to the imminent and final end of this cannibal.

Now to what have the Metropolitan Sheptytzky and his colleagues exhorted you? They have invited you to bow your heads before him. Where is the Vatican leading you at this present time, by the Pope's addresses at Christmas and at New Year? Toward complicity with abetters of Fascism and to mercy towards Hitler, the greatest scoundrel that the history of the world has ever seen.

The Holy Apostle John says: "I have no greater grace than this to hear that my children walk in truth" (III John 1:4). I repeat these words to you and say, as your Father and your Patriarch, that I could not have a more holy consolation than to see you, remembering your ancestors, turn your hearts from the Vatican so as to turn them towards your Mother, the Orthodox Church, who awaits you with outstretched arms, that we may all, the sons of Great Russia and of Galician Russia, feel ourselves to be truly brothers in Jesus Christ, and may advance, in the bosom of the Orthodox Church, towards eternal salvation.

You have doubtless learned from the press that two Eastern Patriarchs, two representatives of the other two Patriarchates, and representatives of the Serbian, Georgian and Rumanian Churches took part in the Sobor of the Russian Orthodox

Church in Moscow in February. Despite the Vatican, the whole Orthodox Church, through these representatives, condemned Hitler, the bloodthirsty one, and sent its blessing to all progressive humanity and to its illustrious leaders who are struggling to destroy Fascism and to cause peace, liberty, and prosperity to reign on earth. I conjure you, my brothers, to keep with us the unity of spirit with the union of peace. Break, tear the bonds which bind you to the Vatican; by its habitual ways it is leading you into the darkness and into spiritual ruin; at this time it wishes to make you turn your backs on the whole world, in arming you against freedom-loving men.

Hasten return to your Mother's embrace, to the Russian Orthodox Church. We shall soon celebrate the liberation of the world from Fascism, the source of aggression and evils. It is necessary that at the same time we shall celebrate your return to the faith of your ancestors, to the House of the Father, to union with us, to the Glory of the Triune God, to Whom be honor and glory for ever and ever.

ALEXEI, Patriarch of Moscow and of all Russia.

DOCUMENT II: DR. KOSTELNYK AND HIS APOSTATE PRIESTS SEND A FORMAL PETITION TO THE UKRAINIAN SOVIET GOVERNMENT FOR OFFICIAL "PROTECTION" [1]

To the Council of People's Commissars of the Ukrainian S. S. R.

In the Greek Catholic or Uniate Church, among both their clergy and the faithful, there have always been found men conscious of the rights of the faith and the truth of their ancestors. In our history, the union of the Church has been conceived and brought about by the Poles, as the surest and most convenient means of submerging our nation. There is no need for deep learning to be aware of this; it is enough to be able to think freely. If Russia had not partitioned Poland, our Ukrainian nation and the White Russian nation would, under Poland, have disappeared from the face of the earth before the "spring of the nations" in the nineteenth century; for, because of the Union, they would have been transformed into Poles. It was then that Russia saved our people from a shameful destruction. Who, then, will think of the children if not their mother?

Under Austria, the Greek Catholic Church in Galicia, in the nineteenth century, shook off gradually the spiritual yoke of the Poles and spiritually contributed to the revival of our people; but under Hungary the magyarization of our people was continued in the nineteenth century, thanks to the Uniate clergy, and it was only Czecho-Slovakia, created after the First World War, which saved our nation. When Poland rose again, it became clear, little by little, that the Uniate church of Galicia was no longer of any use to Rome. Rome had always desired the most complete assimilation of our Church to the Latin Church, and it is for that reason that she introduced the celibacy among our clergy. Those who were fighting for the rights and honor of our Church were under constant accusation and persecution.

Poland wanted to Latinize our Church and Polonize our people; she persecuted the Orthodox Church; availing herself of the Union, she built churches, and, outside Galicia, with the blessing of Rome, she created a new Uniate Church, directly subordinate to the Polish Bishops. Strange things happened: the Metropolitan Sheptytzky protested publicly in the press against the opening of churches called "pre-uniate," and Pope Pius XI sold those churches to the Polish Government for 2,000,000 zlotys.

Our Greek Catholic Church in Galicia found herself hopelessly stationary, without any possibility of development and growth. The partisans of Latinization preached that our Church had to be steered toward full Latinization, and in the same time preached hatred for the Orthodox Church. And those of us who were of independent thought, because of all these abuses of the Union, began to see clearly that our path was not with Rome. They were waiting for a new world-development, for it was the only hope for our people to save themselves and their Church from destruction under chauvinistic Poland.

The war of Hitlerite Germany against the U. S. S. R. became very soon a war of annihilation of all Slavs. One might have thought that the Germans would leave in peace the Uniate Church and the Orthodox Church. It was far from that—they were prepared for the complete destruction of our Church. They brought all sorts of religious sects of German origin, they forbade discussion of the reunion of Greek Catholic and Orthodox Churches, they did not tolerate

[1] Printed in Communist Free Ukraine, Lviv, May 28th, 1945.

consolidation of Western Ukraine, and in Eastern Ukraine (Soviet) they purposely hampered the Orthodox Church, divided it according to their administrative districts, in order to subject the Bishops to the authorities in those districts. The old *divide et impera* was applied to the fullest extent in Ukraine. It became clear that if Germany had won the war, our people and our Church would have been condemned to destruction.

To whom were we to look for assistance? We do not conceal the fact that our people of Western Ukraine were from the fourteenth century under the influence of Western Europe. They were imbued with the ideals that formed Western civilization, and it was because of that that they were enabled to withstand the pressure of Polish super-nationalism.

On the other hand, we in our hearts could not look hopefully at the Soviet Union, because we were afraid of its revolutionary atheism, we were completely alien to its Socialism, and we still did not have confidence in the righteous solution of the nationalities problem in the Soviet Union. But we were erring in that respect; the result of the Patriotic War for the fatherland against the German invader is the best proof how wrong we were. These Soviet peoples, actually, would not have been able to march as a single people and to endure so many sacrifices for their country if they had not been satisfied with the solution of the problem of nationalities. We confess that at the end of the German occupation we had no more than one single thought—fear without any hope. We had committed an error in misjudging the Soviet Union. Under the leadership of the First Marshal, the Incomparable Stalin, the brave and wonderful Red Army covered itself with an immortal glory, has wiped out the Hitlerite army and saved Europe from the frightful Nazi domination and all Slav peoples from destruction.

The centuries-long dream of all Ukrainians have been realized; all the Ukrainian lands have been reunited to the motherland; the Great Ukraine has arisen in a fraternal union with Moscow and all the Soviet people. She has already achieved a full security and every possibility of a most brilliant development.

Marshal Stalin will eternally be in our history the collector of all Ukrainian lands. Thus we, the Western Ukrainians, are grateful to him, because we cannot repay our moral debt to the Soviet Government. The Chairman of the Council of People's Commissars of the Ukrainian S. S. R., Nikita Sergeyevich Khruschov, has also very great merits for the unification of Ukraine. All Ukrainians express their sincere gratitude to him.

This is our stand, which we shall defend with all our resources. We have full confidence in the Soviet Government and we want to work for the good of our Orthodox fatherland, for if the Soviet Government had made so many sacrifices to liberate us, will it refuse anything that we may be able to live?

For those who think, it is clear that the Uniate Church, in these new political conditions and national forms, is an historical paradox. When our Ukrainian nation is united in a single political state organism, its Church also must be united in one Church, in a national Church, depending on no foreign authority, in an Orthodox Church, which is the Church of our ancestors. This ideal was recognized in the most enlightened circles of our people even when we were under Poland. Unfortunately, our Bishops have not been able to adopt a sensible point of view, either of the political situation or of the recent situation of the Church. These historic events have passed over their heads, and we found ourselves without a captain on a sinking ship.

Our Church has found herself out of step and in a state of anarchy. That has had a repercussion on our religious life. This situation cannot last for ever.

That is why, we, the undersigned, representatives of three dioceses, have decided to lead our Church out of this state of anarchy, to consolidate it in the Orthodox Faith, and we ask that our action be approved.

We have decided to undertake the direction of "The Committee of Initiative for the Transference of the Greek Catholic Church to the Orthodox Church." Religious psychology is of a very delicate nature, and one cannot think of an immediate transformation of the Uniate Church into an Orthodox Church. Time will be needed in order to save the honor of the priests, to persuade and educate the clergy, to pacify and re-educate the faithful.

The Committee of Initiative, which every day gains new adherents, intends to start the registration of its members, and the publication of books already written under Polish domination. In general, it wishes to conduct this affair in such a way as not to cause unnecessary struggle. We want to take steps to ensure that there may not be those who will be recalcitrant.

This action will be carried out in accordance with the government and the Synod of the All-Russian Orthodox Church, because only such a cooperation guarantees a complete success.

We therefore ask you to approve our group and give it the right to direct intended action.

(Signed): HAVRIIL FEDOROVICH KOSTELNYK, priest, of the Preobrahzenska Church, Lviv, Chairman of the Committee of Initiative, Representative of the Eparchy of Lviv.

MIKHAIL IVANOVICH MELNYK, parish priest of Nizhankovychi and Vicar-General of Drohobych District of Eparchy of Peremyshl, Representative of the Eparchy of Peremyshl.

ANTIN ANDRIYEVICH PELVETZKY, parish priest of Kopychyntzi, Rural Dean of Husiatyn, Representative of the Eparchy of Stanislaviv.

Lviv, May 28th, 1945.

DOCUMENT III: MEMORANDUM IN REGARD TO THE PERSECUTION OF THE GREEK CATHOLIC CHURCH IN UKRAINE

(Text of the Memorandum which was sent by the General Secretary for Foreign Affairs of the Supreme Ukrainian Council of Liberation to His Holiness Pius XII, the Governments of the United States, Great Britain, and others.)

On March 18, 1946, the TASS reported that the Ukrainian Greek Catholic Church in Western Ukraine, in its "Synod" in Lviv, attended by 216 priests, decided to break its ties with Rome and to return to the bosom of the Russian Orthodox and thus submitted itself to the Russian Patriarch. This fact was also confirmed by the Holy See.

The Soviet commentaries add that this was accomplished by the Ukrainian Greek Catholic Church spontaneously, voluntarily, and with great joy.

The "Synod" had resolved its canonical status, while its relation to the State was determined by the "representative of the Council of People's Commissars for the Russian Orthodox Church on the Council of People's Commissars of the Ukrainian S. S. R." in a letter addressed to the "Committee of Initiative" on June 18, 1945.

The General Secretary for Foreign Affairs of the Supreme Ukrainian Council of Liberation, the only legal government of the Ukrainian people fighting the Bolshevik invasion of Ukraine, makes the following declarations:

1. The break of the Ukrainian Greek Catholic Church with Rome and its submission to the Russian Patriarch was accomplished against the will of the Ukrainian Greek Catholic Bishops, clergy, and faithful. Even the Synod of the Ukrainian Orthodox Church (Autocephalic) abroad in its session in March 1946 in Esslingen, Germany, condemned this "reunion" as an act of brutal persecution of the Ukrainian Catholic Church.

As far back as 1939 (after joint occupation of Poland with Hitler) the Bolsheviks tried to destroy the Ukrainian Catholic Church. But at that time the Russians did not feel strong enough to challenge world opinion by persecuting the Catholics within their borders. But now their attack on the Catholic Church is part of a vast plan for destruction of our present civilization, a plan that took a definite form after the recent Russian victory.

In addition, the prestige of Metropolitan Sheptytzky, then still alive, was too great among the millions of the Ukrainian people not to be taken into consideration. Only after his death in November 1944 did the Bolsheviks renew their attacks upon the Ukrainian Catholic Church. First, they organized a press and radio campaign against the Church. Then they arrested Metropolitan Slipy and his bishops. Bishop Khomyshyn and his Secretary, Father Galant, died the death of martyrs in Bolshevik prisons. The others still remain in prison, nobody knows where nor for what reason. Hundreds of Ukrainian Catholic priests were arrested and deported into the interior of the Soviet Union. Many of them died for their Faith. Hundreds of thousands of Catholics were sent to Siberia or other parts of Russia. Now the Ukrainian people, besides their fight for political and social freedom, have to fight for their religion.

In order to attain their goal, the Bolsheviks have used the so-called "Committee of Initiative" composed of a few priests. This group in its appeal to the Ukrainian Greek Catholic clergy writes: "The State authorities will recognize only decisions of the 'Committee of Initiative' as the only representative administration in the Ukrainian Greek Catholic Church." According to the Soviet

information, the "Committee of Initiative" was represented by 216 priests. There are about 3,600 Catholic priests in Western Ukraine; thus 3,400 are denied the right of administering to their Church and the Faithful.

Furthermore, in his letter to this "Committee of Initiative" of June 18th, 1945, the representative of the Council of People's Commissars for the Affairs of the Russian Orthodox Church on the Council of People's Commissars of the Ukrainian S. S. R., writes: "* * * the list of deans, priests and superiors of religious houses who refuse to submit themselves to the 'Committee of Initiative' should be submited to the authority."

It is necessary to add that the Stalin Constitution in its 124th article guarantees every citizen freedom of conscience. As far as there is question of those who are recalcitrant to the "reunion", one has only to disobey the order.

But yet, not even one Ukrainian Greek Catholic Bishop gave his approval or his voice to this action. One the contrary, the Metropolitan and all Bishops who opposed this action most vigorously were arrested. Thus the "reunion" of the Ukrainian Greek Catholic Church with the Russian Orthodox Church was accomplished against the will of the former.

2. This "reunion" was accomplished under pressure of the Soviet Government, which for this purpose resorted to terror and physical brutality.

As was pointed out, hundreds of thousands of Catholic faithful were deported to Siberia, bishops and priests were arrested and deported, churches were closed. Deaneries were dissolved and their members were arrested and placed in different jails of the Soviet Union. The Greek Catholic Church was left without any administrative authority. Cathedrals and residences of Bishops were confiscated by the state authority.

In 1939 the Russians tried to use Rev. H. Kostelnyk for their purposes, but unsuccessfully. In 1945, in a press campaign directed aaginst the Greek Catholic Church, Kostelnyk was represented as the "enemy of the people" whose two sons were in Hitler's army; but a month later Kostelnyk organized the "Committee of Initiative."

The Ukrainian Catholics west of the "Curzon Line," in the new Poland, have met the same fate. In a Catholic Poland under pressure of the Russians, the same persecution of the Ukrainian Catholics is taking place. According to Russian-Polish agreement came the repatriation of the Ukrainians to the Soviet Union, which the Ukrainians resisted. Hundreds of villages were burned down, many Catholic priests and faithful were killed. Bishop Kocylovsky, Ordinary of Peremyshl Diocese, was ordered by the Polish Warsaw government on September 23, 1945, to leave his See and go east of the "Curzon Line." When he refused to do so, he was promptly arrested. The Apostolic Administrator of Lemkivschyna, Father Malinovsky, was ordered in August 1945, to go under an armed escort to the Soviet Union.

After this terroristic preparation among the Catholic clergy and their faithful, the NKVD was able to organize this "Committee of Initiative," which was ordered to convoke the "Synod" resulting in separation of the Ukrainian Greek Catholic Church with Rome and its submission to the Russian Orthodox Church.

3. This act of "reunion" is another instance in the history of the Ukrainian people of Russian assault upon the liberty and conscience of Ukraine. Representing the well-known theory of a "Third Rome" (ex oriente lux), Russia has been since the fourteenth century aiming at the same goal. It was especially hard for the Ukrainian Church in the seventeenth century. In 1685 the Ukrainian Orthodox Church and its hierarchy was brutally subordinated to the Russian, the Ukrainian language was barred from the Church, religious books were prohibited to be printed in Ukrainian, and the Holy Gospel in the native tongue was considered illegal literature. Heavy censorship was imposed on religious books and all Ukrainian dioceses were staffed with Russians hostile to the Ukrainian people. The Ukrainian clergy was deported to Siberia, while their places were taken by Russian priests. The Orthodox Church in Ukraine became a bastion of Russian imperialistic policy, so hated and opposed by millions of the Ukrainians.

At the end of the sixteenth century the Ukrainian Episcopate concluded a Union with Rome (1596). The Ukrainian Church recognized supremacy of Pope, but retained its rite and extensive rights in the field of Canon law. The Union was signed by six Bishops with Metropolitan Mykhailo Rohoza at their head, and two Archimandrites. In the middle of the seventeenth century Carpatho-Ukraine accepted the Union, and in the beginning of eighteenth century the diocese of Lviv and Peremyshl.

In the second half of the eighteenth century the Union was suppressed by the policy of the Russian Czars. Some 10,000 parishes with eight million faithful were forced to become Orthodox. In 1675 the last Ukrainian diocese under Russia, that of Kholm, was forced to abandon the Union.

Only in the western parts of Ukraine (Galicia and Carpatho-Ukraine) the Ukrainian Greek Catholic Church retained close contact with Rome. In 1939 this Church had more than five million faithful, over 4,000 priests, sixteen Bishops, and one Apostolic administrator.

During the first World War, in 1914, the Russian Government renewed its attacks upon the Ukrainian Greek Catholic Church. Its head Metropolitan Sheptytzky, was arrested and kept three years in Czarist prisons. Today the "democratic Soviet regime" is doing exactly the same thing. The successor of Metropolitan Sheptytzky, Metropolitan Slipy, and other bishops are already in Soviet prisons. The Ukrainian Catholic Church ceased to exist by one decision of a Russian official.

There is no Ukrainian Church, Catholic or Orthodox. There is only one Orthodox Soviet Church under Patriarch Alexei of Moscow, which is alien to the Ukrainian people. This Church is illegal because it was created by the Russian police after liquidation of the old Russian Orthodox Church in 1930–37.

4. From the canonical point of view, the "Synod" of Lviv, attended by 216 priests on March 8, 1946, is illegal and in consequence has no legal obligation for the Ukrainian Greek Catholic Church and its faithful. Only the Metropolitan, according to canon law has the right to convene a Synod, and only bishops have the right to decide in matters of Church jurisdiction.

The Union with Rome was concluded at Brest Synod in 1596, signed by a Metropolitan, six Bishops, and two Archimandrites. Its abolition was signed by three priests in a "Synod" attended by 216.

The General Secretary for Foreign Affairs of the Supreme Ukrainian Council of Liberation, in the name of its revolutionary government, which is conducting an armed struggle against the Bolshevik invaders:

1. Registers a protest before civilized mankind against usurpation by the Russian Bolsheviks upon the conscience of the Ukrainian people.

2. Warns all Christian Churches against the false methods of antireligious Bolshevism.

3. Makes known that the present Russian Orthodox Church in its masses mentions as "being sent by God" Stalin the greatest persecutor of Christianity in the history of mankind.

4. States that in suppressing the Ukrainian Greek Catholic Church the Russians have exclusively a political aim, and not religious consideration for the Ukrainian people.

The General Secretary for Foreign Affairs of the Supreme Ukrainian Council of Liberation submits to the Holy See the following requests:

1. To designate an exarch for the Ukrainian Greek Catholic Church in Western parts of Ukraine until all Bishops and priests will be released from Soviet prisons.

2. To make all efforts for the liberation of Ukrainian Bishops and priests from Soviet prisons.

3. To take a canonical stand in regard to so-called reunion of the Ukrainian Greek Catholic Church with the Russian Orthodox Church.

4. To ask the United Nations to send a mixed commission to investigate the "voluntary" transference of the Ukrainian Greek Catholic Church to the Russian Orthodox Church.

5. To nominate a Field Bishop for the Ukrainian Insurgent Army.

6. To nominate an Apostolic Administrator for the Ukrainian Catholic refugees in Western Europe.

THIRD PHASE OF SOVIET SYSTEMATIC GENOCIDE

Mr. DOBRIANSKY. (3) The third attack is canalized against the conserving organs of the nation's body, against the tillers of the soil, the farmers, the large peasantry which conserves the traditions, the folk music and literature, and the distinct language of the nation. By exterminating this select part of the nation, the ethnographical territory of the nation is sufficiently disrupted to prepare the way for the fourth and last step in this process of methodical genocide.

The unprecedented man-made famine of 1932–33 in Soviet Ukraine, which resulted in the forced starvation of up to 5,000,000 Ukrainians and in moral protest of which the humanitarian members of our Seventy-third Congress, in second session, passed a resolution on May 28, 1934, decrying it, serves as the classic model of this type of attack. One of the most naive ideas circulating abroad is that this was merely an economic phenomenon of Communist liquidation of a social class, "the kulaks." The outstanding facts are that there were relatively few large-scale farmers in Ukraine, that during the NEP policy the Ukrainian peasantry, the main social source from which most prominent Ukrainian intellectuals emerged, became the major force in the preservation of the Ukrainian national idea—the very thing that the Soviet writer, Kossier, was referring to when he declared in Izvestia December 2, 1933: "Ukrainian nationalism is our chief danger."

Economic collectivization is not only an effective means for rigid political control, but, in its genocidal form, as in Ukraine during 1932–33, it aids to annihilate a nation. There is a striking analogy between this genocided famine in Ukraine and that involving 4,000,000 Irish in the nineteenth century. To prove that the famine of 1932–33 in Ukraine was wholly unnecessary and that its deliberate execution altered markedly the population trend in that nation, I wish to offer this statistical report prepared on the basis of official Soviet censuses of 1926 and 1939 by a former Soviet economist, and, in addition, this brochure dealing with the general aspects of that almost incredible tragedy. I have that statistical report in the evidence already submitted and this brochure, Famine in Ukraine.

(The matter referred to is as follows:)

FAMINE IN UKRAINE

By the United Ukrainian Organizations of the United States

A

[H. Res. 399, 73d Cong., 2d sess.]

IN THE HOUSE OF REPRESENTATIVES

May 28, 1934

Mr. Fish submitted the following resolution; which was referred to the Committee on Foreign Affairs and ordered to be printed

RESOLUTION

Whereas several millions of the population of the Ukrainian Soviet Socialist Republic, the constituent part of the Union of Soviet Socialist Republics, died of starvation during the years of 1932 and 1933; and

Whereas the Government of the Union of Soviet Socialist Republics, although being fully aware of the famine in Ukraine and although having full and complete control of the entire food supplies within its borders, nevertheless failed to take relief measure designed to check the famine or to alleviate the terrible conditions arising from it, but on the contrary used the famine as a means of reducing the Ukrainian population and destroying the Ukrainian political, cultural, and national rights; and

Whereas intercessions have been made at various times by the United States during the course of its history on behalf of citizens of states other than the United States, oppressed or persecuted by their own governments, indicating that it has been the traditional policy of the United States to take cognizance of such invasions of human rights and liberties: Therefore be it

Resolved, That the House of Representatives express its sympathy for all those who have suffered from the great famine in Ukraine which has brought misery, affliction, and death to millions of peaceful and law-abiding Ukrainians; be it further

Resolved, That the House of Representatives express its earnest hope that the Government of the Union of Soviet Socialist Republics will speedily alter its policy in respect to the famine in Ukraine, take active steps to alleviate the terrible consequences arising from this famine, and undo so far as may be possible the injustices to the Ukrainian people; and be it further

Resolved, That the House of Representatives express its sincerest hope that the Union of Soviet Socialist Republics Government will place no obstacles in the way of American citizens seeking to send aid in form of money, foodstuffs, and necessities to the famine-stricken regions of Ukraine.

B. Famine in Ukraine

Memorandum of the United Ukrainian Organizations of the United States

During the course of the conversation held in Washington, D. C., last December between our distinguished President and Commissar Maxim Litvinoff—the representative of that conglomeration of heterogeneous alien nationalities commonly known as Soviet Russia—a number of memorandums were received by the State Department concerning that which is considered one of the greatest evils of the postwar period, namely, the oppression and exploitation of submerged nationalities, as classically exemplified by Soviet Russia's ruthless treatment of its enslaved subject nationality—Ukraine.

One such memorandum, which can serve as an example of the others, was dispatched by the United Ukrainian Organizations of Greater New York to the President of the United States accusing the Soviet Government of the following:

(1) Of continuing on even a greater scale the policy of former Tsarist Russia in combating the natural movement of the Ukrainian nation to set up its own free and independent state;

(2) Of destroying all traces of Ukrainian culture and preventing the Ukrainian learned class from pursuing its studies and researches unmolested;

(3) Of ruining the Ukrainian Church;

(4) Of forcibly shifting millions of the Ukrainian population from its native habitat in order to artificially populate the vacated areas with alien peoples;

(5) Of deliberately starving millions of its Ukrainian subjects in order to suppress the Ukrainian aspirations for freedom and the Ukrainian opposition to the Soviet system and policies;

(6) Of hiring through the medium of its communistic bodies in America of common thugs for the purpose of breaking up the Ukrainian anti-Soviet demonstrations staged to present the Ukrainian cause before the American public.

All of the above charges were substantiated by facts as reported in the leading press of the world.

Subsequently, this memorandum was used as a basis of a pamphlet prepared by the Ukrainian National Women's League of America, which, through the medium of the League's branches throughout the country, was brought to the attention of prominent figures in the American life. One of these recipients was the Honorable Herman P. Koplemann, Congressman from the First Congressional District of Connecticut, who upon receiving the pamphlet immediately mailed the same to Mr. Litvinoff in Moscow. Shortly afterward, Mr. Koplemann received the following answer, dated January 3, 1934:

"I am receipt of your letter of the 14th inst. and thank you for drawing my attention to the Ukrainian pamphlet. There is any amount of such pamphlets full of lies circulated by counter-revolutionary organizations abroad, who specialize in the work of this kind. There is nothing left for them to do but to spread false information or to forge documents.

"However, I am instructing Mr. Skvirsky in Washington to supply you with data on the real situation in the Ukraine.

"Yours sincerely,

"M. Litvinoff."

In the early part of February Mr. Koplemann received the following letter from the Embassy in Washington, of the Union of Socialist Soviet Republics, dated February 3rd:

"My Dear Representative Koplemann: Commissar Litvinoff has forwarded to me your inquiry in regard to a pamphlet ostensibly published by the 'Ukrainian National Women's League of America.' In effect these anonymous ladies (I

use the word anonymous because no name nor address is given in the pamphlet) accuse the Soviet Government of deliberately killing off the population of the Ukraine.

"The idea is wholly grotesque. The population of the Ukraine is somewhat over 30,000,000. During the period of the first Five-Year Plan, concluded a year ago, the population increased at the rate of 2 per cent per year. The death rate was the lowest of that of any of the seven constituent Republics composing the Soviet Union, and was about 35 per cent lower than the prewar death rate of Tsarist days. The death rate in the larger Ukrainian cities is the lowest among the cities of the Soviet Union. More than three times as many children are in school today in Ukraine as in 1913. The Ukrainian language is used in the schools as well as Russian, and in the literature and the theatre. It was banned in the Tsarist days. So much for the general charge.

"Fortunately we can check up on one or two specific things mentioned in the pamphlet. They show that the authors were not particularly scrupulous about facts.

"1. The pamphlet states that in the N. Y. Times of August 24, 1933, Duranty stated that three to four million persons in the Ukraine died the same year. Duranty, writing from Moscow on that date, actually stated that from information he had received he estimated that owing to the poor harvest of 1932, possibly three million persons died during 1932, not in Ukraine alone but in Ukraine, North-Caucasus and lower Volga region together, an area roughly triple the size of the Ukraine. The pamphlet does not add that in the Times, September 13, writing from Rostov-on-Don in the course of a personal inspection trip through those sections, Duranty stated that his estimate of July 24, before he had made his personal inspection, was exaggerated. He said that the poor harvest of 1932 had made for difficult conditions in certain sections, but there had been no faminine. Writing from Kharkov, capitol of Ukraine, Sept. 18, 1933, on the conditions of that year, he said:

" 'The writer has just completed a 200-mile trip through the heart of the Ukraine and can say positively that the harvest is splendid and all talk of famine now is ridiculous.' The A. P. correspondent made a similar first-hand report."

The letter then proceeds to disqualify the report of Frederic T. Birchall appearing in the New York Times of August 25, 1933, in which that correspondent states that three or four million people starved to death in Ukraine—by saying that Mr. Birchall was not in Ukraine but used as a basis for his article information received from persons who came from Ukraine. The letter then concludes as follows:

"3. The pamphlet quotes 'The Ukrainian Daily Dilo' published in Lemberg 'in the western part of the Ukraine'? as authority for the statement that six million Ukrainians had starved to death. Here apparently we have a newspaper published in the Ukraine itself apparently admitting this horrible fact. Unfortunately, however, the pamphlet is a little bit misleading. Lemberg, as you can readily see from any standard atlas, is not in Ukraine at all, but in Poland. The 'Dilo' is not a Ukrainian publication. It is an organ issued by an emigre group in Poland by former feudal landlords of the Ukraine, now living abroad. The question is whether one should credit this emigre source or credit the two American newspaper men, representing respectively the N. Y. Times and the Associated Press, who made a personal inspection of the territory in question.

"Sincerely yours,

"B. SKVIRSKY,
Counselor of the Embassy."

The letters of Mr. Litvinoff and Mr. Skvirsky must necessarily be considered as official documents of the Soviet Government. They summarily and in some detail deny the existence of any hunger in Ukraine, brand as lies all news concerning it, and designate all such memorandums and pamphlets as those mentioned above as anti-revolutionary propaganda. No attempt is made to answer the other charges of the indictment as made in the United Ukrainian Organization's memorandum, although in the very opening of his letter Mr. Skvirsky glorifies the cultural work of the Soviet authorities among the Ukrainian population.

It would be needless to emphasize here that neither the anti-Soviet pamphlets nor any explanations on the part of the Soviet Government as to the existing conditions in Ukraine would be necessary if there were any means at hand of verifying the many reports which emanate from Ukraine. And one of the principal reasons for the inability to get a true, clear picture of the situation

in Ukraine is that the Soviet Government not only does not allow any independent and impartial group of people enter its borders for the purposes of investigating the truth of these charges, but the Soviet Government also refuses to permit even journalists of European and American papers to enter Ukraine. Hence there arises the necessity of seeking some other reliable means of verifying the truth of the horrible news of the terrible conditions in Ukraine under the Soviets which somehow manages to filter through the rigid Soviet censorship.

The tenor of the two letters of Messrs. Litvinoff and Skvirsky as quoted above lead one to suppose that Ukraine under Soviet Russia is a paradise for the Ukrainian people, and that only some bourgeois anti-revolutionary elements have nothing else to do but to stir up trouble and combat the Soviets with all the nefarious means at their disposal, especially by disseminating "lies" about the innocent and benevolent Soviet Government.

Let us see if such is the case. Are the Ukrainians really treated exceptionally well, or are they oppressed and expoited in the most cruel manner possible, and if so, for what reasons?

Taking both letters from their official sources as a measure of the truthfulness of Soviet statements concerning the Ukrainian nation and its movement for independence, we wish to call the reader's attention to the statement made in Skvirsky's letter concerning the Ukrainian newspaper "Dilo" of Lviw (Lemberg), capital of Western Ukraine.

The letter avers that "Dilo" is not a Ukrainian publication, but only "an organ issued by the emigre group in Poland by former feudal landlords of Ukraine." And to add weight to this statement the letter even states that Lviw is not within the boundaries of the Ukrainian nation.

Both statements are not only deliberately untruthful, but ridiculous as well.

For, to take the second assertion first. When, in March 1922, the Soviet Government concluded the Riga treaty with Poland by means of which the greater portion of Western Ukraine, known also as Eastern Galicia, was alloted to Poland, the Soviet Government was a most active defender of the Ukrainian province, on the ground that it belonged to Ukraine. When, therefore, Mr. Skvirsky asserts that Lviw is not in Ukraine he is deliberately prevaricating, and his statement has as much weight as if he had said that Kiev is not in Ukraine.

Now, coming to the matter of the Ukrainian newspaper, "Dilo." This Ukrainian daily has been in existence for the past 55 years, and was founded by a group of Ukrainian patriots at the time when the word "Bolsheviki" was not even known. "Dilo" is the leading Ukrainian democratic newspaper in Western Ukraine, and at no time has it been supported or subsized by any group of "feudal landlords." As a matter of fact the "Dilo" has continually waged an unremitting battle against these so-called "feudal landlords."

We herewith solemnly declare, that if "Dilo" is not a Ukrainian newspaper then there is no Ukrainian nation, no Ukrainian race nor movement for independence at all.

A transient remark only, before passing further, on the assertion made in Mr. Skvirsky's letter that there are more Ukrainian children in the Soviet schools now than there ever were in the Tsarist days.

Although glorying in the number of Ukrainian school children in the Soviet schools, Mr. Skvirsky neglects to explain what type of education these children receive.

It is a well known fact that education in Soviet Russia has been devoted chiefly to the Communist credo. This has been even enunciated by leading Soviet officials. For example, Commissar of Education Shumsky was quoted in an article entitled "Education in Ukraine," which appeared in the February 7, 1925 issue of the "School and Society," as saying "that politics must be the cornerstone in the upbringing of children." It is needless to point out that the world "politics" refers to Communistic propaganda which the Soviet authorities seek to instill in the innocent minds of school children in Soviet Ukraine.

To what lengths this system of teaching in Soviet Ukraine has led, is clearly demonstrated in a recent dispatch of Harold Denny, Moscow correspondent of the N. Y. Times (April 3, 1934, issue), which says:

"A student of Ukraine wrote, complaining of the shocking ignorance of ordinary subjects among his university colleagues. He told of cases where students in technical courses did not know where the river Nile and Mississippi flowed and half believed Sahara was the capital of Australia.

"Komsomol Pravda, organ of Communist Youth, in an editorial * * * said that hundreds of such letters had been written."

And finally, in regards to Mr. Skvirsky's statement that the Ukrainian language is used in the schools as well as Russian, and in literature and the theatre—leading one to suppose that the Soviets are fostering Ukrainian culture.

Allow us to quote an excerpt from the London "Saturday Review" (Jan. 18, 1930) which contained an article entitled "The Persecution of Ukrainian Culture," dealing with the trial of a few Ukrainian intellectual leaders, on charges of high treason. The article brings out that—

"The real reason for bringing a charge against Jefremov, Czechiwsky, and the others is the desire to destroy the Ukrainian intelligentsia by getting rid of its chief representatives.

"The Soviet policy in Ukraine, carried on since 1923 and called Ukrainiazation, aimed at obtaining a hold on the national culture of Ukraine and changing it into a culture of the working classes dependent on Moscow. After five years this policy failed entirely. The Ukrainian intelligentsia themselves made use of Ukrainiazation in all branches of life for its own purposes, deepening the Ukrainian national culture and winning the ideological fight with the Communists by their strong resistance. Realizing its failure, Bolshevism has taken to its alternative weapons—terrorism and provocation. By these means it seek to kill the creative efforts of Ukrainian culture."

Today the Soviets openly and avowedly seek to destroy the last vestiges of Ukrainian culture in Soviet Ukraine.

Now let us proceed to the question of the famine in Ukraine.

First of all we are faced with the natural query—Is there any sane and reasonable man in the entire world who would dare flout in the face of the Soviet Government groundless, false accusations of the deliberate starving of a whole race? Obviously, the answer is no!

I

It was most natural that when the Ukrainian people living outside the Soviet boundaries received authenticated reports of the shocking conditions prevailing in Ukraine under the Soviets wherein millions of the population of that unfortunate country had died a horrible death from actual starvation—it was most natural for them to take steps to aid their famine-stricken kinsman, and to take active steps to present these terrible conditions before the eyes of the world. One of the first of such steps was taken by the Ukrainians of Western Ukraine under Poland.

Alarmed by the letters from their relatives across the border in Soviet Ukraine, by well-authenticated dispatches of foreign correspondents, descriptions by actual eye-witnesses, and from reports drawn from official Soviet sources and statistics (notwithstanding their greatly minimizing character) the Ukrainians of Western Ukraine, through their representatives in the various central national societies, formed on July 14, 1933, in the city of Lviv, capital of Western Ukraine, a Civic Relief Committee For Starving Soviet Ukraine. Similar bodies were set up in other provinces of Western Ukraine which are under Rumania and Czechoslovakia, as well as among the Ukrainian emigrants in France, Germany, America, and Canada. Appeals for cooperation and aid were drawn and sent to the Ukrainians throughout the entire world, including a rough half-million or so of them in the Far East.

On July 24, 1933, the Ukrainian Greek Catholic Bishops of Western Ukraine issued an Appeal on behalf of the starving population of Soviet Ukraine, excerpts of which read as follows:

"Ukraine is in the clutches of death. Her population is dying of starvation. Built upon injustice, fraud, godlessness and unrighteousness, the present regime has brought this formerly rich country to complete ruin * * *

"In the face of these crimes, human nature revolts. Unable to give your dying brethren any help, we appeal to all of you to do all you can * * *

"Before the whole world we raise a mighty protest against the persecution of the little ones, the poor, the weak and the innocent.

"The blood of workmen who, starving, toiled the rich black soil of Ukraine, cries for revenge to heaven and the voice of the hungry reapers reaches our Almighty God."

A spontaneous mass movement of Ukrainians throughout the entire world sprang up as news piled upon news of the raging famine in Ukraine. Meetings protesting against the Soviet Government's policy, which directly led to the famine, began to be held in practically every Ukrainian community where such meetings could be held. These protest meetings increased in number and intensity when it became apparent that the famine was a deliberate Soviet measure

designed to act as a punitive action against the Ukrainian population for its failure to support the Soviet policies, and also as an act designed to quell once and for all the ever-rising Ukrainian aspirations and strivings for liberty.

In several of the larger American cities such as Boston, New York, Chicago, Detroit, Cleveland, Syracuse, Ambridge, American citizens of Ukrainian descent staged great mass demonstrations against the Soviet misrule in Ukraine. A number of leading Ukrainian national organizations dispatched memorandums to the United States Government at Washington, D. C.

The Ukrainians of Canada, numbering over a half a million, also took an active part in the world-wide Ukrainian protest against the Soviet misrule in Ukraine.

II

In August, 1933, the Vienna Cardinal, Dr. Theodore Innitzer, moved by various news reports and letters received from the famine-stricken areas, and other news reaching Vienna, issued an appeal to the whole civilized world on behalf of the starving Ukraine and other parts of Soviet Russia, and also called an international movements on behalf of the starving population in Soviet Russia. which conference was held in Vienna in December 16 and 17th, 1933.

III

The General Secretary of the Congress of European Minorities, Dr. Ewald Amende, made a thorough investigation of the reports emanating from Soviet Ukraine and published his findings in moving words in the Vienna press, in August 1933. And when the Minorities Congress convened on September 16–19, 1933, in Bern, Switzerland, the question of saving Ukraine under the Soviets from starvation was the principal issue at its sessions. The Congress, after declaring that "it is the policy of red Russian imperialism to destroy the physical existence of the Ukrainian nation according to some preconceived plan," passed a resolution supporting the action of Cardinal Innitzer as well as other similar relief international movements on behalf of the starving population in Soviet Russia.

IV

At the meeting of the Council of the League of Nations in Geneva, September 29, 1933, its president, the premier of Norway, Mr. Movinkel, raised the question of aiding the starving Ukrainian population of Ukraine, and the Council decided to refer the matter to the attention of the International Red Cross in Geneva.

V

It would be a sheer physical impossibility to enumerate even a small part of the European and American newspaper reports describing the horrible conditions in Ukraine. We will limit ourselves, therefore, to only a few of these reports as an example of the rest.

The Montreal Daily Herald of April 25, 1933, in an article entitled "Thousands Cry for Bread in One Busy Ukrainian City," says:

"In the station waiting room three hundred of the homeless boys were herded to be taken away. * * * They are homeless children of hunger, most of them turned out of their homes to fend for themselves because the peasants have no bread."

From a letter published in the Detroit News, September 2, 1933, we read:

"Our dear native Ukraine is now sad and gloomy, and the life there is hungry and naked. * * * In our village there is complete starvation. * * * We ate up all that could be eaten—cattle, dogs, and cats * * * the people fall like flies in autumn."

Le Matin, in Paris, on August 30, 1933, published the story of two Americans, natives of Ukraine, returning from a visit of the country of their birth, in such terms that the whole French liberal press was moved to investigate the conditions in Soviet Ukraine.

The New York Times of August 29, 1933, reprinted this same story as sent in by its Paris correspondent. It quoted the "two American citizens" as saying that, "when they arrived in Kiev they said they were horror stricken by the appearance of the people. Everybody, they said, seemed to be suffering from swollen legs and seemed to be crippled * * * they found, too, that food and money that they had sent to relatives never had been delivered during the past year."

The Manchester Guardian of September 13, 1933, printed the report of a fugitive from Soviet Ukraine who stated that the famine had started in 1932, when the Soviet Government had taken away from the peasants all of the grain.

Richard Wraga, in the January 20th, 1934, issue of the Polish paper "Bund Mlodych," of Warsaw, reports that 12,000,000 of the population of Soviet Ukraine died of starvation, and that 3,000,000 have been deported. This is the latest and most startling account originating in Poland, the closest neighbor and friend of Soviet Russia.

H. Lang, in an article entitled "What I Saw and Heard in the Villages of Ukraine," which appeared in December 27th, 1933, issue of the Yiddish New York "Forwaerts," gives a vivid description of the devastated Ukrainian villages ravaged by the famine and the Soviet policy of extermination, and says that all singing among the Ukrainians has ceased and that the beautiful Ukrainian costumes have disappeared. A mute silence reigns now over the now half-depopulated Ukraine. He also corroborates the news that no newspaper correspondents are allowed to visit Ukraine.

Carveth Wells, world traveler and author, in his book "Kapoot" (Robert McBride and Company, New York, 1933), describing his journey through Ukraine, says:

"The extraordinary thing was that the farther we penetrated into Ukraine, which used to be the 'Granary of Russia,' the less food there was and the more starvation to be seen on every side. Hour after hour the train passed through country that looked very much like North Dakota or Saskatchewan, except that it was covered with weeds as far as the eye could see.

"Farm houses were in ruin everywhere, roofs gone, fences broken down, wagons without wheels, farming implements lying about in every stage of 'kapootness,' while wretched-looking peasants with rags tied around their feet were to be seen wandering about aimlessly and watching the train go by without a smile on their faces. * * * None of us knew what tragedies had been enacted here as a result of trying to force the people to join the collectivized farms. * * * From the train windows children could be seen eating grass."

At one place at 4:30 A. M. they had to change trains. An excerpt from Mrs. Well's diary describes the following scenes:

"We arrived at the station. My God, what a sight! I shall never forget it. Poverty, filth, disease, and hunger everywhere. Women in rags and tatters are lying about in the dust and dirt half asleep with emaciated little babies sucking their empty breasts. I can see one poor woman with four small children. She is nursing all three children while she herself is chewing on a small cucumber. There are pieces of old watermelon rinds on the ground about her. I see a little girl who looks about 10 years old, to judge from her skinny little body, but her face looks like that of a woman 30 years old. She is taking care of a tiny baby whose face is purple with cold. Even I am cold at this hour of the morning. I smiled at the child, but she didn't smile back. I'm wondering if she has ever learned to smile."

From these fragmentary reports there appears to be not the slightest doubt as to the existence of a terrible famine in Ukraine under the Soviet oppressive misrule. The only question which is not quite cleared up as yet is the extent of this terrible disaster. And yet the Government of Soviet Russia, in the face of all this overwhelming evidence, has the audacity not only to deny all the reports, as well as the declarations of world-famous personages and international organizations, including the Council of the League of Nations, but it refuses even to permit the slightest bit of relief to be sent to the starving population from abroad.

In conclusion we wish to call the reader's attention to a most striking description of the conditions in Soviet Ukraine and other starving provinces in the Union of Soviet Socialistic Republics, which was published in the London Answers of February 24 to March 3, 1934, by Mr. Whiting Williams in his article, My Journey Through Famine-Stricken Russia."

"Mr. Williams," says the editor of the Answers, "the first man to travel across the hungry Russian Ukraine since the famine conditions returned in the spring of 1933, is an experienced businessman and journalist, and author of many books on working-class conditions.

"Before going to look at Soviet Russia's cities and countryside he had worked as a journeyman laborer in American mines and factories, as a miner in South Wales, and a steel worker in Germany, the Saar Territory, and France. He had, therefore, first-hand knowledge of the conditions of the workers in Europe and in America when in 1928 he went to Russia for the first time. Now he has returned to that land in order to discover for himself the truth about the "hunger

stories" printed in the world's newspapers during the past year, and in this issue of the Answers he sets down faithfully and without any exaggeration the amazing record of what he saw and heard in that country."

And this record is as follows:

"MY JOURNEY THROUGH FAMINE-STRICKEN RUSSIA"

["Answers"—February 24, 1934]

Famine!

"In a far-off Chinese mission a doctor, weary of an unavailing fight with death, whispers the word, and the whisper grows into a shout that echoes round the world. And presently the relief ships are racing across the oceans, carrying grain and rice to the coolies whose harvest has failed.

Famine!

It is nature's challenge to man—and man meets it always in the twentieth century with the proud pledge, "They shall not starve!" There are many things about which the nations bicker, but let one of them be facing this gaunt horror of hunger, no matter how it has been brought about, and the rest will show that "the brotherhood of man" is no idle phrase, but a living reality.

Here, indeed, is the truest internationalism earth has ever known—an internationalism based not on fine words or theories but on the hearts of men and women who have children of their own and cannot bear the thought of little ones starving in any corner of the world.

Millions dead and dying

Yet, in spite of all this, during the last 12 months, in one European country, millions of people have died of starvation. They are still dying like flies today. Dying in a land which was formerly one of the richest of all the peasant states after what has been officially described as "the biggest wheat crop for 50 years."

You think it incredible, fantastic? So did I when the first murmurs of the catastrophe reached me.

"Only the strong will see the next summer's sun," said the chambermaid in a Soviet hotel in which I stayed at the beginning of the tour which took me through the length and breadth of the Russian Ukraine. I laughed at her.

Traveling by rail to Kharkov, the capital of this great agricultural and industrial province, I talked in German to an engineer who was in the same coach.

"You know that starvation has been killing off people here by the millions?" he said. He was quite matter-of-fact, almost casual about it, as if he had been saying: "You know we have had a fine summer?"

Famine's final seal

"Nonsense," I said. "The thing's crazy! If there were anything like that happening, the whole world would be ringing with it and organizing relief."

He shrugged his shoulders.

"Well, let's ask the conductor," I said. He was passing through the coach just then.

"My own daughter died of hunger just 3 months ago today," he said simply, when we put the question to him.

Even then I could hardly believe that there had been anything beyond, perhaps, a few isolated deaths in remote villages. But as I went through the country, and particularly in the Donetz Basin, I found that the engineer had not lied.

Everywhere men and women were thinking of one thing, and one thing only—bread. Would they get enough of it to keep them alive throughout the winter? They had only too much reason to ask the question, to look with dread to the future, for they had seen so many neighbors, friends, and relatives die of starvation already.

"It has been worse than the famine of 'twenty-one,'" I was told on every hand. And I knew that the Russian famine of 1921 had claimed 5,000,000 victims.

But I am not reporting merely what I have heard. Once I was off the beaten track which the tourists follow I saw with my own eyes the victims of famine. Men and women who were literally dying of hunger in the gutter.

Have you ever seen a human being in the last stages of starvation? If you have done so once, you can never mistake the signs. The swollen faces and ankles which follow the breakdown of the body's normal functioning set the final seal of famine upon the emaciation of long-continued want.

"Wild children's" fight for life

They sat there in the streets, their eyes glazed with despair and privation, begging as I have never seen anyone beg before. Their little cups appealed for kopecks, but they themselves were too weak to speak, or even to raise a hand or eye to attract charity.

"With good luck I hope to get through the coming winter," a Donetz railway laborer told me. But in my village, just over that hill, I have often seen my neighbors lying dead in the streets. I've counted 25 of them in one morning—sometimes more."

All the time he was speaking he was looking around furtively to make sure that no one was within earshot. It may be possible to survive the famine, but no one in Russia today can hope to escape the Ogpu once its spies are on his track.

Dead people in the streets! I found it difficult to believe. At last I mentioned it to a young woman who had given me information on other subjects.

"They make one last effort to get outside," she exclaimed, "in the hope of finding or being given a crumb of bread. And then they are too weak and just drop."

A day or so later I saw an old man lying in the road on the outskirts of one of the steel towns. I have sufficient medical knowledge to know that there was nothing which I, or anyone else, could do for him.

But the worst memory I have brought out of Russia is the children. There was one youngster I saw in Kharkov. Half-naked, he had sunk, exhausted, on the carriageway, with the curbstone as a pillow, and his pipestem legs sprawled out, regardless of danger from passing wheels.

Another—a boy of eight or nine—was sitting among the debris of a street market, picking broken eggshells out of the dirt and examining them with heart-breaking minuteness in the hope of finding a scrap of food still sticking to them. His shrunken cheeks were covered with an unhealthy whitish down that make me think of those fungoid growths that sprout in the darkness out of dying trees.

I saw him again in the same place the next day—motionless now with his head sunk between his knees in a piteous abandonment.

While eating in a restaurant in the same town I saw a girl of twelve run up the steps towards a veranda table from which a customer had just risen. For a moment she hesitated; shrank back as if in fear as she saw the man look at her. Finally, reassured by his expression, she darted boldly forward, gathered the scraps he had left on his plate in her fingers, then turned and ran down the steps with her prize.

For all the world she was like a wild bird driven by a hard winter to a town garden. There was the same suspicion, the same holding back, and the same momentary boldness followed by headlong flight. Something, also, perhaps, of the same grace and beauty. I shall never see her again, but I cherish the hope that she will survive.

There are hordes of those wild children in all the towns. They live—and die—like wild animals.

Where do they come from? I made inquiries about them, and learned that last winter, when food supplies began to fail, large numbers of peasants left their villages and came into towns with their families, hoping that there they might get a chance to work—and eat.

There was neither work nor bread for them, and under a new regulation that required every adult in the towns to show papers to prove his right to be there, they were driven back to their foodless villages.

They believed they were returning to certain starvation. So they left the children behind. In the villages, they said, the little ones would inevitably die—in the towns, their chance of life might be slender, but it was at least a chance.

Something like 18,000 children were abandoned in this manner—abandoned because that was the only way in which their parents could help them—in Kharkov alone.

These bands of wild children are not a new phenomenon in Russia. In the early days of the Revolution they were found even in Moscow itself. Then they disappeared—we were told that they had been rounded up and placed in homes, where they would be cared for and educated and made into good citizens.

I saw some of the wild children of this winter being rounded up. A horse-drawn wagon lumbered along the street, with two or three policemen marching beside it. When they saw one of the little Ishmaels the police gave chase. If the youngster was caught, he was placed among the others already in the wagon, and the procession moved on again.

Tragedy in the siding

Once, when the wagon stopped and a chase was in progress, two of the lads previously captured saw their chance, scrambled to the ground, and made off as hard as they could into a maze of narrow alleyways.

I felt rather sorry for these youngsters, running back to the hardship and hunger of their life in the gutter, when, as I thought, they would have been fed and clad and educated in the institution to which they were being taken. But when I mentioned this to a Russian acquaintance he just stared at me.

At first I could not believe what he told me. Then I spoke to a number of other people. They all said the same thing.

These children were not sent to homes. Bread was too scarce. They were put into railway wagons and unloaded out in the open country—too far out for it to be possible to walk back to town.

And once, at least, three wagons filled with youngsters were shunted into a siding and forgotten for 3 days. When, at the end of that time, someone found them, not one of the children remained alive.

I don't pretend, of course, that this was a typical case. But what chance have children dumped out in the open country? There may be a village within walking distance, but when they reach it conditions there are probably as bad as in the places to which their parents refused to take them back, because they knew they couldn't get food for them.

What tourists don't see

Here is what a British agricultural expert reported to his principals in London after traveling hundreds of miles through the farm lands of the north Caucasus:

"In whole districts the extinction of the population through famine is in full swing. In some villages I visited the population is now almost extinct. In others about half the population has died off. In the villages I visited the number of deaths varied between 20 and 30 a day. There are still villages in which death from famine is not so frequent. But famine in some degree reigns everywhere in the regions I have visited."

The man who wrote that had no thought of his report, or any part of it, ever being published. He was writing simply and solely for the information of his principals. He had no political ax to grind.

Neither, for that matter, have I. I have been just as much impressed as any of the tourists, who are so carefully and efficiently conducted, with Communist guides and interpreters always at their elbow, through Russia's show places, with the great new factories, the giant "palaces of culture," the palatial workers' clubs, and hospitals. And I pay willing tribute to what the Soviet have achieved in the way of "liquidating" illiteracy.

But I have seen the darker side of the Russian experiment—the side which the conducted tourist is never allowed to glimpse. I have talked, without an interpreter, to people whom the tourist would never even meet; have penetrated to towns and villages of which he has never heard. And I know that factories and machinery, clubs, and schoolbooks, and cinemas are no substitution for bread, and consider it more important that I should tell the truth as I have seen it than that I should leave the door open for my return to Russia at some future date.

Driven to cannibalism

What this British expert found in the Caucasus I saw wherever I went in the Ukraine, and my observations were confirmed by a thousand conversations. Here, typical of many others, is a story told me by a foreign representative who has spent 5 years in Russia:

"A group of young Communists went out to visit a village where a population of a thousand had been reduced to a mere hundred. In one house they found 5 people lying in one room—two of them dead, three still alive, but very weak. They asked the neighbors why the corpses hadn't been buried.

" 'Why bother?' was the reply. 'The other three—and a few others—will go shortly, and one big grave is easier to dig.'

"One member of the group was so shocked by this and by the other things he had seen and heard that he shot himself when he got back to the town."

There is another development more horrible than any which I have yet described—so horrible that I dare only touch upon it. I first heard of it while talking to a person whom I knew to be absolutely reliable.

"A relative of mine," he said, "was arrested for a minor offense, and met in prison a woman who had been convicted of killing and eating her little boy.

"'We couldn't both live,' she said, 'and he was the weaker one. So weak that, whatever happened, he couldn't possibly have lived 2 days longer. So I thought it was better for one of us to keep going.'"

A day or two later I saw in a Russian newspaper an account of a man's trial. He was accused of killing a number of people and selling their flesh in the market. Then I made inquires and found that in the Ukraine just now cannibalism has become a commonplace.

"There were so many cases in the famine of 1921 that the courts were still trying them in 1925 and 1926," I was told. "And, of course, it is happening again now. It is bound to."

Doctors daren't tell

In all Russia, how many victims—how many millions of victims—has the famine already claimed? I can't pretend to say. There are no statistics. Officially, no one dies of hunger in the land of the Soviets. The doctors are government employees, and they dare not report any death as caused by starvation. "Weak heart" or "exposure" is the favorite formula.

All the people in a position to judge with whom I have talked, however, including engineers and experts whose work takes them all over the country, are unanimous in saying that famine conditions have been more widespread during the last 12 months than they were in the hunger years of 1921. Then, too, there was organized foreign famine relief, which saved unnumbered lives. This time there has been no such helping hand.

It is also significant that, even among Russians who are not starving, food is the one all-absorbing topic of conversation, and that the only argument about the famine is whether the death-roll amounts to 15 millions or only 10!

That, admittedly, does not mean that even the lower figure is a safe one to accept. But there seems only too much reason to believe that the number of those who have died of starvation is well in excess of the 5,000,000 who perished in the famine of 1921.

Of course, the conducted tourists won't believe it. They saw for themselves—what they were meant to see. I was shown a letter written by a woman in Yalta to a friend in Kiev.

"Last Tuesday we hardly knew Yalta," it ran. "As you know, we had a terrible number of starving people. I have 30 of them daily at my door, and try to give a morsel to all them so that none will drop down and die before my eyes. But last Tuesday all these were missing—and our traffic policemen blossomed out in new white uniforms. We couldn't make out why—until, about 11 o'clock, we saw that some hundreds of strangers from abroad were paying us a visit."

Where the "sack" means starvation

In the towns the workers—that is, those who have jobs—are getting enough, just enough, to keep them alive. In the last 5 years after making full allowance for the much-advertised right of the Soviet employee to buy at privilege prices, real wages have been reduced by 75 percent, and many workers can only afford to eat once a day.

That is while the job lasts. But dismissal may follow a very minor offense, such as being 5 minutes late for work in the morning. And once a man is discharged, not only does his income stop, but his food card is withdrawn, which means that he can only buy bread at the top price, and he is turned out of his home.

And after that? Sooner or later famine will claim another victim."

In the March 3 issue of the "Answers," Mr. Williams concludes his observations, as follows:

"WHY RUSSIA IS HUNGRY

"Why is it that Russia, formerly one of the granaries of the world, is now in the grip of famine?

"As I passed through the country, making the appalling discoveries which I described in my first article, I asked myself this question, and discussed it with many of the people whom I met.

"One think struck me forcibly. Whereas, in the old days, Russian fatalism would almost certainly have ascribed this catastrophe to 'the will of God,' no one seemed to think of giving that answer today.

"Not because the Communists have succeeded in their avowed aim of stamping out religion—there was ample evidence that they haven't—but because it was

obvious to everyone that the scarcity was due not so much to any failure in the crop as to the way in which it had been dealt with.

"Last autumn's wheat crop was, indeed, described to me as the biggest for 50 years, yet I found that this fact did not decrease in the slightest Russia's fears of another winter of starvation.

"This was due to two facts—failure to harvest the whole of the crop, and doubt as to the destination of what grain was actually gathered.

"Grain left to rot

"Failure to harvest the crop? It seems incredible in a country where millions had been dying for want of bread. But I saw with my own eyes, in the fertile farmlands of Soviet Ukraine, field after field covered with ungarnered grain, that had been allowed to rot where it had grown and ripened and been cut.

"There were districts where it was possible to travel for a whole day between these fields of blackening wheat, seeing only here and there a tiny oasis where the harvest had been got safely in.

" 'It's because so many farmers starved or were shipped away last spring,' was one answer which I got repeatedly, when I inquired about this mysterious waste.

"Yet to replace the peasants who were no longer available, millions of city workers were transferred from desk and factory to work in the fields. And work they did—every man and woman of them—for 14 hours a day until they cracked under the strain.

"I was told of one case where, out of a hundred city workers who were drafted to a certain farm for the harvest, only 70 returned alive. And there were countless instances in which members of the harvest brigades were in bed for weeks, seriously ill, as a result of their labors in the field.

"It was not altogether the unaccustomed work which was responsible for this. If they had been properly fed most of them could have stood up to it. But they were expected to perform this arduous toil on a diet which consisted mainly of cabbage soup. Bread was as scarce in the midst of that abundant crop as it was everywhere else in Russia.

"Again it seems inconceivable. But the same rule applied to those 'volunteers'—technically, at least, they were volunteers—from the cities as had always been enforced with the peasants. Not one cupful of grain had to be kept back or used by the harvesters under pain of death. All must be delivered to the government granaries, situated, perhaps, 10 or 20 miles away.

"Eating the farm horses

"And not one ounce of it could be returned to the farms until all the harvest was in, and the central authorities in Moscow had decided what percentage of it was to be retained and what portion might be allowed to go back.

"It must be remembered that many, at least, of the volunteers and peasants were already weak as the result of prolonged privation, and the city workers were unskilled and clumsy. When the starvation regime continued over the harvest, it was no wonder none of them was capable of doing a good day's work.

"Even when, despite all this, the grain was cut and piled into shocks on the fields, it was often impossible to transport it to the Government centers. Many of the peasants' horses had been killed when their owners were forced into collective farms; others were eaten later on, when the food shortage became more acute. The few which remained were as gaunt and emaciated as the villagers themselves, and quite unfit for heavy work.

"At first it was thought that this would not matter. There would be motor transport from the cities. But when it arrived it was found, in the great majority of cases, to be quite inadequate. So the cut grain blackened and rotted in the shocks.

Yet so good was the crop, it may be that, in spite of this appalling waste, the actual deliveries to the granaries were better than those of the previous year. Even those who mentioned this possibility, however, were doubtful if that would mean any real improvement in this year's bread supply.

"There is an ironic reason for this. Under the Second Five Year Plan, which is to make Russia a land flowing with milk and honey—and manufactured goods—new machinery is required, and must be bought from abroad. But to buy machinery money—or credit—is necessary, so exports must be maintained. And prices remain low, which keeps down the value of the goods which the Soviets send overseas.

"Wanted for the war chest

"So many Rusisans, I found, were asking the question: Would the authorities be able to sell a sufficient quantity of other commodities for their purpose, or would they be forced to send abroad part of the precious grain so urgently required at home?

" 'But surely,' I said to one of my informants, 'surely they wouldn't try to export wheat when lives are in the balance?'

"He shrugged his shoulders.

" 'Machines are more important than men,' he said. 'Even if we don't export any more of it, I expect that there will be some of it wanted for the War Chest.'

"He went on to explain that the situation in the far East was so grave that the Government had no choice but to build up reserves of food and essential stores for use in the event of emergency.

" 'Work or starve!'

" 'Soldiers must be fed,' he said, 'and the peasants are sullen. It would be no use appealing to them to grow more food. Instead, they'd probably be more difficult to deal with. At present it's only the Red Army that keeps them at work and gets in the crops for the state granaries. Every soldier at the front would be one less to keep them at it.'

"I gathered from other remarks this man made that he believed that a considerable portion of the wheat crop of 1932 was put aside in this way, and that this was the real cause of last year's famine. He was an intelligent, educated person, and he discussed the whole business in a curious, detached way, as if nothing really mattered.

"From other sources I heard whispers of a still stranger and more dreadful possibility—that some of the leaders of Russian communism today might regard the continuance of the famine over this winter as being quite useful, because it would drive home to peasants and factory hands alike the grim but essential lesson: 'Work or starve!'

"Personally, I find it difficult to believe this—it is too inhuman—but I know that one British agricultural expert, who has traveled widely in Russia, and knows the psychology of its rulers, has suggested quite seriously that the famine may be starvation 'according to plan.'

"No time for politics

"Russia, he says, has been on short commons for years; but if a certain proportion of the hungry population were allowed to die off, there would probably be no difficulty in growing sufficient food for the rest. And he seems to think it quite possible that the central economic planning of the Soviet is now being applied to the ghastly task of equalizing by this dreadful means the demand for food with the supply.

"It is only right to add that other competent observers to whom I have repeated this theory, are quite convinced that it is wrong.

" 'At the same time,' remarked one of them, 'there is much to be said from the Soviet authorities' point of view, for keeping the population on short commons.

" 'If food is scarce, everybody is devoting all his energy to getting it. No trouble is too great, no period of waiting too long, if only there is food at the end of it. The result is that no one has any time or energy left for politics.

" 'And that, of course, is very convenient for the Communists. They are only a small minority of the population, and, as they themselves must know quite well, even terrorism wouldn't keep them in power if once a mass movement against them got going.

" 'But there is no chance of such a mass movement—people are too busy trying to get enough food to keep on living from day to day. So, however much they may dislike the government, they don't combine against it.'

"Perhaps the most plausible of all the explanations I received, however, came from a foreign engineer with whom I talked.

" 'The Russians are doubtless building up reserves in readiness for a possible war,' said this expert. 'But the real trouble is that their planning has started from the wrong end. They've sacrificed agriculture to manufactures, and been so busy putting up the world's biggest factories that they've let the world's biggest wheatfields go to rack and ruin.'

There is a good deal of truth in that. And the application of Communist theories to agriculture has certainly been disastrous. All over Russia the Soviets have tried to stamp out the kulaks, or rich peasants.

Collective farms a failure

They weren't really very rich, these kulaks, but they were the best farmers in the villages—and usually the hardest workers. When they were dispossessed and driven into exile, the standard of farming, never particularly high, fell alarmingly. And the much-advertised collective farms have done nothing to raise it.

"I have told in these articles what I have seen and heard in Russia. I have given you the explanations that have been given to me. What is not explained—what, I believe, the civilized world will say cannot be explained—is why no effort has been made to relieve the famine-stricken millions; why the Soviet Government has kept all news of their plight from a world whose willingness to help no one can doubt."

(Another article of Mr. Williams appeared in the December 1933 issue of the Nation's Business, organ of the United States Chamber of Commerce in Washington, D. C.)

If, however, in spite of all this overwhelming evidence showing conclusively the existence of a terrible famine in Ukraine the Soviet government still denies the existence of the famine in Ukraine, then there is still a remedy, as suggested by the sixth convention of the United Ukrainian Organizations of the United States held in New York City on November 2, 1933, which passed a resolution to the effect:

"That an investigation be made of the policy of the Russian Soviet Socialist Government towards the Ukrainians and other subjugated nationalities of Soviet Russia, and that an impartial commission be sent to Soviet Russia to verify the truth of the reports emanating from it about the starvation of the Ukrainian population in Ukraine, and its causes."

C. WILLIAM HENRY CHAMBERLIN, THE MOSCOW CORRESPONDENT OF THE CHRISTIAN SCIENCE MONITOR, REPORTS ON FAMINE IN UKRAINE

FAMINE PROVES POTENT WEAPON IN SOVIET POLICY—MORE THAN 4,000,000 PEASANTS ARE FOUND TO HAVE PERISHED IN 1933 WHEN STATE FORCED COLLECTIVE FARMING ON THEM—"RUSSIA—WITHOUT BENEFIT OF CENSOR"

(After ten years as staff correspondent of the Christian Science Monitor in Russia, Mr. Chamberlin has left Moscow to become the Monitor's chief correspondent in the Far East.)

"The collective farmers this year have passed through a good school. For some, this school was quite ruthless."

This was how President Kalinin, in a speech delivered early last summer, referred to the food situation in Ukrainia and the North Caucasus. When the prohibition on travel by foreign correspondents in the rural districts was relaxed in the autumn, I had an opportunity to find out what this "ruthless school" had meant in concrete practice.

I shall never forget a scene which I witnessed in a Ukrainian village named Zhuke, which lies some 15 miles to the north of Poltava. The president of the local collective farm and a state agronome, or agricultural expert, were accompanying me on visits to a number of peasant houses. So long as my companions chose the houses to be visited I found myself invariably meeting local Communists or udarniki (shock brigade workers), with pictures of Lenin, Stalin, and Kalinin on the walls and a fairly contented tale of their experiences.

I suddenly picked out a house at random and went into it with my companions. It was a typical Ukrainian peasant hut, with thatched roof, earth floor, benches running around the walls, an oven and a rickety-looking bed as the chief articles of furniture. The sole occupant was a girl of 15, huddled up on the bench. She answered a few simple questions briefly, in a flat dull voice.

The price of liberty

"Where is your mother?"
"She died of hunger last winter."
"Have you any brothers or sisters?"
"I had four. They all died, too."
"When?"
"Last winter and spring."
"And your father?"
"He is working in the fields."
"Does he belong to the collective farm?"
"No, he is an individual peasant."

So here was one man—his name was Savchenko—whose passive stubborness defied even Kalinin's "ruthless school," who refused to go into a collective farm, even after almost all the members of his family had perished.

My companions, the president of the collective farm and the state agronome, had nothing to say. Smooth-tongued officials in Moscow might assure inquiring visitors that there had been no famine, only little food difficulties here and there, due to the wicked machinations of the kulaks. Here on the spot in Zhuke, as in a dozen other Ukrainian and North Caucasian villages which I visited, the evidence of large-scale famine was so overwhelming, was so unanimously confirmed by the peasants that the most "hard-boiled" local officials could say nothing in denial.

Everywhere a tale of famine

Some idea of the scope of the famine, the very existence of which was stubbornly and not unsuccessfully concealed from the outside world by the Soviet authorities, may be gaged from the fact that in three widely separated regions of Ukraina and the North Caucasus which I visited—Poltava and Byelaya Tserkov and Kropotkin in the North Caucasus—mortality, according to the estimates of such responsible local authorities as Soviet and collective farm presidents, ranged around 10 percent. Among individual peasants and in villages far away from the railroad it was often much higher.

I crosses Ukraina from the southeast to the northwest by train, and at every station where I made inquiries the peasants told the same story of major famine during the winter and spring of 1932–33.

If one considers that the population of Ukraina is about 35,000,000, and that of the North Caucasus about 10,000,000, and that credible reports of similar famine came from parts of the country which I did not visit, some regions of the Middle and Lower Volga and Kazakstan, in Central Asia, it would seem highly probable that between 4,000,000 and 5,000,000 people over and above the normal mortality rate, lost their lives from hunger and related causes. This is in reality behind the innocuous phrases, tolerated by the Soviet censorship, about food stringency, strained food situation, and so on.

What lay behind this major human catastrophe? It was very definitely not a result of any natural disaster, such as exceptional drought or flood, because it was the general testimony of the peasants that the harvest of 1932, although not satisfactory, would have left them enough for nourishment, if the state had not swooped down on them with heavy requisitions.

Hidden stocks of grain which the despairing peasants had buried in the ground were dug up and confiscated; where resistance to the state measures was specially strong, as in some stanitsas, or Cossack towns; in the Western Kuban, whole communities were driven from their homes and exiled en masse, to the frozen wastes of Siberia.

State had it "squeeze"

Unquestionably, the poor harvest of 1932 was attributable in some degree to the apathy and discouragement of the peasants, subjected, as they were at that time, to constant requisitions, at inequitable fixed prices—the state was practically compelled, by the necessity for raising capital for its grandiose, new industrial enterprises, to squeeze out of the peasants a good deal more than it could give them in return—of their grain and other produce by the authorities, and driven against their will into an unfamiliar and distasteful system.

The Communists saw in this apathy and discouragement, sabotage and counter-revolution and, with the rulthlessness peculiar to self-righteous dealists, they decided to let the famine run its course with the idea that it would teach the peasants a lesson.

Relief was doled out to the collective farms, but on an inadequate scale and so late that many lives had already been lost. The individual peasants were left to shift for themselves; and the much higher mortality rate among the individual peasants proved a most potent argument in favor of joining collective farms.

War is war, but—

The Soviet Government, along with the other powers which adhered to the Kellogg pact, has renounced war as an instrument of national policy. But there are no humanitarian restrictions in the ruthless class war which, in the name of socialism, it has been waging on a considerable part of its own peasant population; and it has employed famine as an instrument of national policy on an unprecedented scale and in an unprecedented way.

At the moment it looks as if the famine method may have succeeded in finally breaking down the peasant resistance to collectivization. In 1921 the peasants were strong enough, acting no less effectively because they had no conscious union or organization, to force the government to give up its requisitioning and to introduce the "Nep," or New Economic Policy, with its security of individual farming and freedom of private trade, by withholding their grain and bringing the towns close to starvation.

Now the tide of revolution has rolled beyond the "Nep" stage, and in 1933 the Soviet Government, quite conscious of what it was doing, was strong enough to wring out of the peasants enough foodstuffs to provide at least minimum rations for the towns and to turn the starvation weapon against the peasants themselves.

(The Christian Science Monitor, Boston, May 29, 1934.)

[Editorial]

D. FREE OF THE CENSOR

William Henry Chamberlin, the very competent correspondent of the Christian Science Monitor at Moscow, represented his newspaper in Russia for the past 10 years. Unlike most correspondents in Moscow, he speaks Russian fluently. His wife is a Russian. He has traveled far and wide in the Soviet republic, and is considered the best informed of any American correspondent.

Mr. Chamberlin is now free of Soviet censorship. As he has been transferred to the Far East, he need no longer consider the effect of his dispatches on the rulers of Russia.

In one of his first uncensored articles he declares that more than 4,000,000 peasants died of starvation in Ukraine and the North Caucausus during the winter of 1932–33.

He visited many parts of these districts, and he found the same story—10 to 25 percent of the population in towns and villages wiped out.

Mr. Chamberlin makes the amazing assertion that the Soviet officials deliberately allowed millions to starve to death to "teach the peasants a lesson" and force them into the cooperative farms.

Some communities that showed a resistance to cooperative farming were driven by force from their homes and exiled en masse to the frozen wastes of Siberia.

Heavy requisitions of food for the cities or export often left entire villages with not enough food to sustain life, and the inhabitants perished.

Mr. Chamberlin points out, that this is the first instance on record of a civilized nation actually resorting to famine as a deliberate instrument of national policy, dooming millions to death to break down resistance to government edicts.

Mr. Chamberlin's story is a ghastly one. Why it should be delayed a year can be readily understood by anyone who knows the rigid restrictions on correspondents in Russia.

But now that some of them, like Mr. Chamberlin, Eugene Lyons of the United Press, and some veteran English correspondents, are leaving Russia and are free to print the truth as they saw it during their long service in Russia, we are getting facts instead of Soviet propaganda. (The Boston Post, May 31, 1934.)

Mr. DOBRIANSKY. (4) The fourth and last step, alluded to above, is the systematic settlement of Russians or Asiatic tribesmen in the disrupted area in order to mix up the nationality in question and thus create a mixed ethnic territory. This obviously follows the full performance of genocide on a nation in select part and therefore as such. In the statistical report referred to, it will be observed that whereas, according to the 1926 Soviet census, the total population of Soviet Ukraine was 29,000,000, of which Ukrainians made up 23,200,000, or 80 percent and others 5,800,000, or 20 percent, in the 1939 Soviet census, the total population of Soviet Ukraine is set at 31,000,000, consisting of 19,600,000 Ukrainians, or 63.2 percent, and of others, 11,400,000, or 36.8 percent of the total. It should be noted, too, that the total increase over these 13 years was barely over 1,000,000 in a country which prior to World War I occupied the foremost place, not only in Europe, but in the world, with respect to its natural increase

of population, about 800,000 a year. On the basis of the latest "normal" period of 1924–27, when its yearly average was 2.36 percent, a natural increase which would practically double the population within the span of one generation, the total population of Soviet Ukraine by 1939 should have been close to 40,000,000, as against the actual 31,000,000. The impact of Soviet genocide on the Ukrainian Nation is unmistakably clear from these Soviet figures, and it is noteworthy that since 1939, the Soviets have for obvious reasons drawn down a statistical iron curtain. On these significant changes in the racial and national composition of Ukraine, I wish to direct your attention again to the submitted report.

This presentation on Soviet genocide of the Ukrainian Nation would certainly be incomplete if adequate mention were not made of the outstanding Soviet crime in the city of Vinnitsa, the true meaning of the slave labor camps in relation to the Ukrainians and other non-Russian peoples, and the geopolitical significance of systematic Soviet genocide. Let us analyze each in order:

VINNITSA

(1) The Czechs have their Lidice, the Poles their Katyn, and though it is tragically little known, the Ukrainians have their Vinnitsa. In the city of Vinnitsia, 91 mass graves, containing 9,432 bodies, most with three or four bullet holes in the back of the head, were discovered in the period of May 25–October 28, 1943. It was established by the French, Swiss, Swedish, and Italian doctors who were invited to witness this spectacle of Soviet genocide that the tragedy occurred sometime in 1937–38, under the murderous auspices of the NKVD, and all the available data relating to this mass murder have been filed with the International Red Cross in Geneva. Several witnesses of this crime are living on this continent today. Writing in the December 1948 issue of the The Socialist Herald, a Russian-language paper in New York City, in an article entitled "I was at Vinnitsa," Dr. George Alexandrov vividly describes his horror at the time of the excavation of these mass graves in the "Park of Culture and Rest."

He writes:

> I for one can no longer keep silent; I will talk about what I saw and heard * * * I will talk and testify about that crime in the name of those who have been left unrevenged.

In its issue of November 23, 1948, America-Echo, an American-Polish publication, corroborates this with the eyewitness story of Dmytro Melnyk. I should like to submit an additional eyewitness report by a Ukrainian journalist now residing in Canada (Exhibit: Eyewitness Report on the Vinnitsa Mass Murder Discovery, by Mr. Seleshko). Also, may I present in person Mr. Anton Dragan, another Ukranian journalist who witnessed the unsightly effects of this genocidal Soviet crime, which, may it be noted, was repeated during the past war in the cities of Lviv, Stanyslaviv, Kolomyja, and others.

Mr. Dragan is here, he was at the city of Vinnitsa, sir. He is in the rear of the room. Do you wish to ask him any questions?

Senator McMahon. Was he there when the graves were opened, or was he there when it took place?

Mr. Dobriansky. He was there when the graves were opened.

RELATIONS OF U. S. S. R. SLAVE CAMPS TO GENOCIDE

(2) As for the true meaning of the Soviet network of slave labor camps for the non-Russian peoples, there is an inseparable relation between these camps and Soviet national genocide. One of the gravest errors that we can fall into is to think, as indeed the Soviet Government would like to have us do, that the millions who end their lives there, are mere "political offenders." I regret to say that I am compelled to disagree with Mr. Dean Rusk on his testimony before this committee that the convention does not apply to the concentration camps. The glaring fact is that the mass of innocent Ukrainian nationals deported to these camps are doomed to perish from physical exhaustion, undernourishment, or murder after they have passed the limits of usefulness.

These institutionalized depositories of mass deportations are the monumentless cemetries of millions of Ukrainians from whom the M. V. D. squeezes every remaining ounce of physical resource before they are rubbed out of existence. The eminent authority on this matter, Dr. David J. Dallin, coauthor of the aforementioned work on "Forced Labor in Soviet Russia," estimates that the further life-existence of an inmate in these camps is on the average of 5 years. This goes a long way to explain in essential part why the total Soviet population in 1939 remained at the 1914 figure of about 170,000,000, and whereas it should be at about 300,000,000 today, it is estimated at only 190,000,000. On the mass deportations of Ukrainians and their extermination in the Soviet compulsory labor camps, I refer you again to the submitted report on Soviet genocide. Relative to this subject, may I present also this document pamphlet describing genocide in Soviet-dominated Poland. I offer that exhibit by Mr. Dushnyck.

(The matter referred to is as follows:)

DEATH AND DEVASTATION ON THE CURZON LINE[1]

The Story of the Deportations From Ukraine

(By Walter Dushnyck)

Preface

The following pamphlet is the fourth in a series of studies of postwar deportation tragedies in Europe. It is published by those of us who have joined to form the Committee Against Mass Expulsion, as heretofore listed.

The scale of the deportations, involving some twenty million people; the fact that they occurred mostly since the end of hostilities and are therefore crimes of peace and not of war; the fact that the victims of deportations have not been recognized as displaced persons and have become men without the rights of man, the comparative silence of the press about them—all of these factors make the question one of the most neglected of all the great moral issues which confront the civilized world.

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[1] Published by Committee Against Mass Expulsion, in cooperation with the Ukrainian Congress Committee of America

Among the members of the Committee Against Mass Expulsion are: William Henry Chamberlin, writer and author; George S. Counts, Teachers College, Columbia University; Christopher Emmet, writer and commentator, chairman; Varian Fry, author; Rev. William J. Gibbons, S. J., associate editor, America; Rev. John Haynes Holmes, pastor, Community Church; Sidney Hook, professor of philosophy, New York University; Rev. John LaFarge, S. J., editor, America; David Martin, secretary, Refugee Defense Committee; Liston Oak, editor, the New Leader; Natalie Wales Paine, chairman, Common Cause, Inc.; Norman Thomas, chairman, American Socialist Party; Dorothy Thompson, writer and author.

This latest pamphlet, Death and Devastation on the Curzon Line, deals with the least known phase of the whole tragedy. Its subject is the Ukraine, most of which has been behind the Iron Curtain ever since World War I. Hence we are particularly happy to be able to publish so thorough a study by so well qualified an author as Mr. Walter Dushnyck.

Mr. Dushnyck was born in Western Ukraine, is a U. S. citizen and has been for thirteen years a resident of this country. He graduated from the University of Louvain in Belgium in 1935, and won his M. A. degree at Columbia University in 1940. During the war he took part in some of the most crucial campaigns of the Pacific, from Saipan to Okinawa. For the last six months of his military service he served on Gen. MacArthur's G-2 Foreign Liaison Section in Manila and Tokyo, as interpreter in the Russian and French languages. Mr. Dushnyck is now on the staff of AMERICA, National Catholic Weekly, and his reviews and articles have appeared in many other magazines. He made a special study not only of his country of origin, the Ukraine—which necessarily involved the study of Russia and Poland—but he has specialized in the various studies of the whole refugee problem in recent years. He has recently consented to become secretary of our Committee.

Obviously, data on so completely-blacked out an area as Ukraine has been especially hard to get. Obviously, also, the sources of this data must be largely concealed. Nevertheless we are satisfied, after investigation of these sources, to recommend this study as authoritative and accurate within the limits of its claims.

There are not only the Polish communist documents which Mr. Dushnyck cites to confirm his charges, but the reports of many refugees who have escaped, of returning Allied prisoners of war from that area, of American citizens who have been repatriated, and of such Allied and neutral personnel as have penetrated the area. Lastly, there is the Ukrainian underground which has gathered and transmitted certain material itself.

The exploits of this underground provide material for an epic tale. Their story, told in this pamphlet, is confirmed by increasing evidence from captured Nazi documents. These latter reveal the extent of the Ukrainian Resistance during the war, both against the Nazis and the Soviet government, a resistance which continues to the present moment.

We commend this account unhesitatingly to all who are interested in trying to alleviate the consequences of a colossal tragedy. Some things which can be done now are suggested at the conclusion of the pamphlet. But until the story is told and the truth made known, no final solution can be reached. Therefore the circulation of such informative pamphlets as this is most opportune.

CHRISTOPHER EMMET,
Chairman, Committee Against Mass Expulsion.
WILLIAM HENRY CHAMBERLIN.
Rev. WILLIAM J. GIBBONS, S. J.
GEORGE S. COUNTS.

I. MYSTERIES AND BLUNDERS ABOUT THE CURZON LINE

1. IF LORD CURZON HAD KNOWN * * *

In 1943, when Soviet Russia suddenly became a loving member of the international family of free and democratic nations, the American and British papers were deluged with "information" about a vague and undefined Polish-Soviet frontier, which was commonly referred to as the "Curzon Line." A great number of American and British "expert" writers, professors and professional diplomats blindly acepted the Soviet claim to the Ukrainian and White Ruthenian territories east of the so-called Curzon Line, which from 1920 to 1939 had belonged to Poland. Soviet Russia's claim, however, was based on a fictitious and historically false pretension.

In 1920 a British statesman by the name of Lord Curzon arbitrarily suggested that a line, running from the Narew River in Northern Poland down to the San River and the Carpathian Mountains, become a permanent Polish-Soviet political boundary. Furthermore, it was implied that the territories east of the same line were part of Czarist Russia prior to 1914.

Former U. S. Ambassador to Poland, Arthur Bliss Lane, gives the following explanation of the origin of the Curzon Line:

"Based on a provisional line fixed for administration purposes by the Paris Peace Conference on December 8, 1919, it extended from the Polish-Lithuanian frontier along the Niemen River to Grodno, through Brest-Litovsk, and thence along the Bug River to the former Russian-Austrian boundary, or northern frontier of Eastern Galicia, which had not yet been formally incorporated into the Polish state. When Lord Curzon, in a note dated July 11, 1920, to the Soviet Government, described the proposed armistice line between the Poles and the Russians, he unilaterally extended the line of December 8, 1919, to the Czechoslovak frontier, running to the east of Pyemysl and to the west of Lwow" (I Saw Poland Betrayed, p. 35).

This statement, however, requires some elaboration. The origin of the Curzon Line has no connection whatsoever with the Soviet state. It came into the diplomatic dictionary as early as the spring of 1919, when the Supreme Council of the Allied Powers was debating the status of Eastern Galicia, then in a state of war between the Poles and Ukrainians. A special commission on Polish Affairs was created and under the chairmanship of Lord Curzon worked out a plan for settling the future of Eastern Galicia.

The commission drew up two alternative frontier lines. Line A, running east of Przemysl and west of Lviv, was proposed as the boundary line between the Polish state proper and an autonomous Ukrainian Eastern Galicia, which, the Poles hoped, would be under the suzerainty of Poland. Line B, on the other hand, further to the east, left Lviv and Drohobych with its oil fields to Poland, and was recommended in the event Eastern Galicia be divided between Poland and an independent Western Ukrainian (Galician) state. It was not anticipated, however, that Eastern Galicia would fall into the hands of the Bolsheviks, whom the Allies—namely Great Britain and France—were then trying to wipe out in Russia. The Supreme Council of the Allied Powers accepted the proposed line (Line A), in general, as a "demarcation line" on December 8, 1919, when the Ukrainians were ousted by the numerically and technically superior Polish troops.

During the Polish-Soviet war in 1920 the proposed demarcation line of December 8, 1919, became associated with the name of Lord Curzon, inasmuch as the latter had taken part in the Polish-Soviet peace negotiations. In the meantime Poland and Soviet Russia came to an agreement and signed a peace treaty at Riga in March 1921, which resulted in the establishment of a new Polish-Soviet boundary line, and which existed until September 1939.

But whatever the Ukrainians had against the pre-1939 government of Poland, they knew Soviet or German sovereignty to be even more undesirable. When the war broke out in 1939, most of them felt that a time of extreme hardship and political persecution would descend upon the whole of Ukraine. Few, if any, entertained the illusion that the occupation of that part of their soil either by Germans or Soviets would bring any amelioration of their political and social status.

2. "THE MOLOTOV-RIBBENTROP LINE"

On September 17, 1939, the Soviet troops crossed the Polish-Soviet frontier and in a few days occupied what was known as the ethnic non-Polish territories, inhabited for the most part by Ukrainians and White Ruthenians. According to the Soviet-German pact of August 23, 1939, the Soviets laid claim to these territories on the basis that the Ukrainians and White Ruthenians should be re-united with their brothers in Soviet Ukraine and Soviet White Ruthenia (Byelorussia). The Germans, who wanted to buy Soviet "neutrality" at any cost, readily agreed to the so-called "Molotov-Ribbentrop Line," which ran approximately along the same line delineated by Lord Curzon in 1919: it extended from the Polish-Lithuanian frontier to the Carpathian Mountains. Thus most of the Ukrainians came under the Soviet dictatorship. The million who lived west of that line, namely in the regions of Lemkivschyma and Kholm (western part) remained under Nazi rule.

The period from September 17, 1939 to June 21, 1941, known as the first occupation of Western Ukraine, has gone down in Ukrainian history as one of the periods of greatest suffering. Mass deportations combined with outright executions terrorized the entire population. Members of cooperative societies and leaders of social and cultural groups were executed at random or exiled into the depths of the Soviet Union. More than 750,000 Ukrainians were either killed outright or deported to slave labor camps in Soviet Russia.

When the Germans attacked the Soviet Union in June, 1941, the Russians decided to exterminate the Ukrainians in Eastern Galicia and Volhynia totally.

Soviet troops and NKVD detachments massacred Ukrainians by the thousands, and the prisons of Lviv, Tarnopol, Drohobych, Stryj, Boryslav and others were littered with dead and dying bodies.

Soon after their occupation, the Nazis began an energetic campaign to recruit all available labor for German agriculture and industry. When the Nazis mistakenly became sure of a victory over Soviet Russia, they introduced the Schrecklichkeit policy in the Ukraine. In answer, thousands of young Ukrainians went underground to form the powerful Ukranian Insurgent Army (the UPA), which fought the Nazis to the last day of their stay in Ukraine. The same underground movement waged an implacable war against Soviet Russian occupation of Ukraine and communist partisans, hoping to establish a free and independent Ukraine at the end of the war.

3. THE YALTA AFTERMATH

The main importance of the Yalta capitulation does not lie in the ceding of the Ukrainian and White Ruthenian territories, which were formerly part of Poland to Soviet Russia, but, instead, in the human tragedy which is glibly called the "transfer of population."

When the Allies, especially the United States and Great Britain, agreed to the Soviet demand to occupy half of Poland and all of the Baltic States, they automatically sanctioned the brutal and inhuman treatment of populations meted out by the Rusisan totalitarians. In simple truth, they could not, and apparently never will, understand the Russian mind. The French Jacobins, known for their ruthlessness, used to say to their compatriots: Sois mon frere, ou je te tue! (Be my brother, or I will kill you!). Yet the record indicates that these Jacobins were mere babes compared to the Russian Bolsheviks.

As early as 1944 the Soviets, immediately after occupying a good part of Poland, began their work of mass deportation and "resettlement." The Poles were to be sent westward to the "new" Poland, and the Ukrainians, White Ruthenians, and Lithuanians found west of the Curzon Line, were to go eastward. According to the Soviets and their Warsaw puppets, it was to be an entirely voluntary affair. Yet the transfer was identical with Hitler's tactics when he occupied Poland in 1939, at which time Ukrainians were forcibly being exchanged for Germans in the USSR.

With the final defeat of Germany and the end of hostilities, the entire European East was in a state of bitter war against the Soviets. Powerful underground armies in Poland, Ukraine, and the Baltic States waged a desperate struggle for survival, fighting the ruthless deportations by the Soviet government. Yet, the Western world, overwhelmed by its recent victory over Germany and Japan, paid scant attention to the plight of these people whom the Russians had earmarked for complete extermination.

4. PEOPLE WHO REFUSE RUSSIAN SLAVERY

When the Polish-Soviet frontier was definitely agreed upon in 1945 following the Yalta Conference, there were still some 1,200,000 Ukrainians living west of the new boundary. They inhabited the western parts of the former Polish provinces of Przemysl (Lemkivschyna in the South), Lublin, Kholm, Polisia, and Pidliasia in the north. It is true that at the beginning the Soviet government did request from its Warsaw puppets simply that all Ukrainians be sent east of the new frontier on a "voluntary basis." Accordingly, the Soviet propaganda machine went into motion, several Soviet repatriation commissions were dispatched to the Ukrainian towns and villages in order to convince the people that if they would go to Soviet Ukraine voluntarily, the Soviet government would grant them farms and machinery free of charge. The intelligentsia, such as teachers, dentists, lawyers, engineers, doctors, and other professional men were "invited" especially to come and help rebuild the Soviet fatherland.

But the Ukrainians ignored the bait. The dreadful memories of the executions and mass deportations of Ukranians in Eastern Galicia were far too vivid. Only too well they knew that the communist regime of Soviet Russia was the enemy of free man, and that their brother Ukranians were kept in political and social bondage.

The determination not to leave their ancestral land developed to such a degree that by the close of 1945 the Ukrainian underground resistance movement numbered some 100,000 to 120,000 well equipped and highly disciplined fighting men. Entire districts and towns were in their hands; the authority of the

Ukrainian Insurgent Army (the UPA) was felt not only in the Carpathian Mountains, but as far as the woody and marshy regions of Volhynia and Polisia (the Pripet Marshes). Finally, when units of Marshal Malinovsky's Second Army were returning eastward from the war in Germany, thousands of Ukrainians serving in the ranks seized the opportunity to desert the Soviet ranks and join the Ukrainian nationalist partisans, who fought not only Stalin's regime but his Polish henchmen in Warsaw as well.

The Soviet government experienced great difficulty in combatting the underground. When the Ukrainians west of the Curzon Line did not respond to Soviet and Polish appeals to join their brother Ukrainians in "the happiest country in the world," the Soviet government adopted the drastic policy of forcibly deporting all Ukrainians from what now is Poland.

To execute this move the Warsaw government was told to muster the entire police force at its disposal, namely, the Polish Army, the MO (Citizens' Militia), the KBW or the Corps of Internal Security and finally the polish NKVD, UB. Although these forces were composed of Poles, the command was, for the most part, in Rusisan hands.

It may be noted here that in presenting the brutalities and horrors perpetrated by the "new" Poland upon the Ukrainian population, we have no intention of assigning the responsibility to the Polish people for these acts. We know that after all the Poles themselves are merely slaves of the Soviet state. We know that the Warsaw government which ordered the wholesale massacre of the Ukrainians is not a truly representative government of the Polish people, but a satellite puppet instead, which takes its orders always and solely from Moscow.

II. Confused and Inaccurate Reports in the American Press

1. SOVIET PROPAGANDA LINE REPEATED

In January 1946, when Soviet-American cooperation was deemed a possibility, a few American correspondents were allowed to visit Poland and to write about the tragic fate that befell the Ukranians in Soviet-dominated Poland. As a rule, these reports were in line with the Warsaw-Moscow policy of representing the Ukrainian minority who were unwilling to go to the Soviet slave state as being nothing less than "fascists," "White Russian renegades of General Vlasov," "former German SS men" and the like. Even such distinguished and internationally known correspondents as Sydney Gruson of The New York Times unwarily, it seemed, succumbed to the spell of Warsaw propaganda. In the reporting of these developments, the Ukrainians unfailingly were described as "bandits" and "murderers," favorite terms used by the Soviets to describe their opponents.

A typical example of such reporting appeared in the New York Daily News of January 28, 1946, under the name of Tenolde Sunde, The News' staff correspondent. Sent from the little town of Humenne in Czechoslovakia, it read:

"A queer secret, savage war is being fought in this Carpathian Mountain region where Ukrainian irridentists called 'Benderovci,' assisted by White Russian renegades and German SS and Gestapo escapees from Soviet prisoner-of-war camps, have taken absolute control of the rugged sector of Poland and frequently spill over into eastern Slovakia. Numbering perhaps 20,000, according to Czech military estimates, the 'Benderovci,' named for one Bender, a pre-war Ukranian leader who fought for the Nazis, actually govern and administer a rough triangular area extending from a point of the Dukla Pass to Sanok and Lupkov.

Fork of Neptune Insignia

"The bandits are organized into regiments and, operating as disciplined and highly trained forces, wear German, Russian, Czech and English uniforms with the identifying insignia of the three-pronged fork of Neptune on their tunics. Their arms consist of heavy and light machine guns, automatic rifles and pistols. * * * The stated purpose of the powerful outlaw organization is to achieve the independence of the Ukraine. * * * The 'Benderovci' include followers of the notorious White Russian General Vlasov, who went over to the Nazis. * * * They definitely receive support from the Polish leader, General Anders, and his force now in the American and British zones of Germany. * * * In one respect the 'Benderovci' are playing an important part in Eastern Slovakian politics. The Communists are beginning to lose supporters in this Red area, due to the people's growing terror of the 'Benderovci.' * * * The Polish chaos

is so complete that the Russians have found it necessary to move in, to officer the troops from the top."

An Associated Press dispatch, dated April 19, 1946, in Warsaw, gives at least a less colored version:

"Strongly armed bands of Ukrainian nationalists are terrorizing southeastern Poland, crossing the demarcation line from the Russian side of the frontier and burning villages, carrying off livestock and leaving thousands of Polish peasants homeless. * * * The wave of terror, extending southeast from Rzeszow along the San River, is being fought by several divisions of Polish militia. * * * These Ukrainians have insisted upon their right to remain on Polish soil and also have demanded that the Ukraine be made an independent state. Many of the Poles attacked are living in homes once occupied by the Ukrainians."

Thus the life-and-death struggle of the Ukrainians against the forcible deportation by the Soviet-oriented Polish government was badly depicted as banditry and pillaging, without any attempt to give the real background of these tragic acts.

2. HOW THE "NEW" POLAND RESPECTS HUMAN RIGHTS PRINCIPLES

The plan to exterminate all those Ukrainians who refused to be sent to the Soviet Union, originated in the Kremlin: Stalin could not tolerate a Ukrainian-conscious minority even outside the USSR. From the time of the establishment of the Soviet-Polish frontier on the Curzon Line, the Soviets have waged ceaseless efforts to persuade the remaining Ukrainians to go to the Soviet Union. Toward that end they have sent several "repatriation commissions," which began functioning in such major towns as Przemysl, Sanok and Yaroslav. With the more than willing cooperation of the Polish authorities, the Soviets held several "propaganda meetings," at which they strove to convince Ukrainians to go east of the Curzon Line.

The Poles, or to be more exact the Warsaw communist officials, did not have to be told twice to help "persuade" the Ukrainians to move east. Their turn came when these Soviet "repatriation commissions" completely failed; the Ukrainians stubbornly refused to move from the localities in which they had been living for centuries. At first the Poles arrested and summarily executed a few dozen Ukrainians in the city of Yaroslav. Then the communist-led groups of the MO (Milicja Obywatelska—Citizens' Militia) began to terrorize the Ukrainian population and loot their homes in the city of Przemysl (Peremyshl). Several Ukrainian families of prominence, such as the Fedaks, Barans and Romankivs, suffered beatings and lootings. During the "repatriation action" several prominent Ukranian leaders were kidnapped by the Polish MO and handed over to the Soviet NKVD agents, who had permanent headquarters in the city itself. Among the victims were Dr. V. Okolit, Dr. Kovtsev and the Very Rev. M. Barabash, abbot of the Basilian Monastery, and several Basilian nuns, whose fate is unknown to the present day.

To the victims of the Polish-Soviet brutalities belonged the Most Rev. Joseph Kocylovsky, Ukrainian Greek Catholic Bishop, who was forcibly taken out of his palace and handed over to the Soviet authorities in June 1946.

The "action" was performed by the units of the Ninth Division of the Polish army, and a unit of the officer candidates' school (szkola podchorazych), as well as by the special agents of the UB and MO. The looting of the Bishop's palace was conducted under the supervision of District Commissioner Felczynski and the UB Chief, Dzugaj. Among the officers many spoke Russian.

Told that he should be ready to leave for Soviet Ukraine in two hours, Bishop Kocylovsky maintained the dignity and prestige of a prelate. He replied simply: "Rome has given me my diocese, and Rome alone can remove me from my city." This, of course, was hardly a serious argument for the communist storm troopers. Bishop Kocyloysky was seized bodily by soldiers and agents and, with a total disregard of his advanced age (he was 76), literally flung into a military truck. Under a strong armed convoy he was taken to the frontier village of Medyka and handed over to the Soviets. He was reportedly taken to a Kiev prison, but an unconfirmed report released in 1947 stated that the venerable prelate had died in a Soviet dungeon. With him was also taken his Auxiliary Bishop Lakota, Very Rev. Ivan Krych and others. All were abused and beaten by the MO troopers.*

In his recently published book, I Saw Poland Betrayed (p. 205), Arthur Bliss Lane, who resigned as U. S. Ambassador to Poland, gives more details

*The New York Times of July 1, 1948, reports that the Vatican received news that Bishop Josaphat Kocylovsky died in a Russian prison after having been tortured.

as to the function of these para-military organizations used for the "repatriation action" of the Ukrainians:

"Yet another organization, known as the Voluntary Citizens' Militia Reserve (O. R. M. O.) and also numbering one hundred thousand, had been formed. This sinister group, composed of adherents of the Polish Workers' Party, was used to break up political meetings, to damage buildings occupied by the opposition parties and, like the hoodlums of the Brown Shirts, generally made life disagreeable for all those who did not toe the government line. Dressed in civilian clothes, they were identifiable by their red and white arm bands and the rifles slung over their shoulders."

Another military group, KBW (Korpus Bezpieczenstwa Wewnetrzego) or the "Internal Security Corps," was formed as an independent unit at the disposal of the Minister of Public Security to be used against "bandits" and others who opposed the Soviet puppets. The later group numbered in 1946 at least 100,000 men, and like the O. R. M. O., was directly under the supervision of Radkiewicz, the chief of the UB, and not under the command of the Polish army under Marshal Rola-Zymierski.

Apparently the Poles, following Russian orders, thought that by breaking down the Ukrainian intelligentsia, they would be able to "repatriate" with comparative ease the some 700,000 to 800,000 Ukrainians from the "new" Poland. But the Ukrainian peasants proved to be what they always were. Most of the villages put up a determined resistance, giving considerable trouble to the Fifth and Ninth Divisions (labeled "punitive") of the Polish army, which were ordered to help the Soviets in expelling Ukrainians to the Soviet Union.

The so-called "repatriation" (a misnomer, for these Ukrainians were not foreigners on the soil from which they were being forcibly expelled) was conducted under inhuman and barbarous conditions.

The amount of human misery entailed by such action as deportation and transfer of hundreds of thousands of human beings cannot easily be understood by an American, or, for that matter, Western mind. Entire villages were fired upon by artillery with the definite intention of destroying them thus depriving the recalcitrant Ukrainians of their habitation. In several localities men, women, and children were murdered in order to terrorize the rest of the population into leaving for the Russian-occupied Ukraine. Those who were compelled to go were given only two hours time to make their departure. Generally, only a few personal belongings were allowed to be taken. Thousands of Ukrainians were then forced to some railroad station under armed escort from where they were sent to the Soviet Union. During the forced marches, these "repatriated" Ukrainians were molested and even beaten by escorting Polish guards, armed with tommy-guns and pistols. No medical attention was permitted, and those Ukrainians who were sick or tired, were, as a rule, shot on the spot.

Against such inhuman and barbarous practices the Ukrainian population on the west side of the Curzon Line had no one to whom to turn for protection. The United Nations Charter apparently was not for those persecuted and beaten. For a time in some villages the Ukrainian Insurgent Army (UPA) groups were strong enough to put up an effective resistance against the Soviet-controlled Polish army.

The Ukrainian Press Service in London has compiled a list of several villages where the Ukrainians were killed and their homes razed by the Polish troops. The following is only a partial report:

"1. The village of Valva was raided several times by the Polish army, but the partisans of the UPA repelled it on many occasions. Yet, by the end of 1946, the Poles had thrown back about six army battalions and had broken into the village. More than 80 per cent of the houses were completely burned and 30 persons killed, mostly women and children;

"2. In the village of Hnatkovychi the Poles were forced to make six large attacks in order to break the resistance. Over 40 persons were killed, and the rest taken prisoner and sent to the Soviet Union;

"3. The same action took place in the village of Vovyno, where the Polish army killed 25 women and childen before rounding up the rest of the villagers and sending them to the Soviet collecting points;

"4. Horokhivtsi, another village, was burned and half of its inhabitants were forcibly sent to Soviet Ukraine;

"5. The village of Richytsi was 90 percent destroyed, with its 35 inhabitants killed brutally;

"6. In the village of Brylivtsi about 20 per cent of the original inhabitants remained after they accepted Polish citizenship;

"7. More than 25 persons were killed in the village of Sosnytsi, while the rest were taken to the Soviet Union;

"8. The village of Mackovychi was burned and 6 persons killed."

The same happened in many other villages, such as Tysava, Vilshana, Krechkove, and Dusovytsi.

III. Zavadka Morochivska—the "Ukrainian Lidice" of 1946

1. Eye-witness report on atrocities perpetrated on Ukrainians by the Soviet-inspired Polish army

In the course of the "repatriation action" hundreds if not thousands of Ukrainians were murdered in a cold, premeditated manner. No crime, however big, committed by the Nazi executioners seems to surpass the bestialities perpetrated by the Soviet-led Polish army on Ukrainians in many villages west of the Curzon Line. In particular, what took place in the village of Zavadka Morochivska on January 23, 1946, seems to have touched the nadir of human cruelty. It was planned and executed by the Polish government of Bierut and Co., whose representative to the United Nations, Dr. Oscar Lange, was then accusing the United States and Great Britain of "threatening" peace in Iran and Indonesia.

The following report of the mass murder of Ukrainians by the Polish army in the village of Zavadka Morochivska, District of Sanok, Poland, was sent by the Ukrainian underground. Its authenticity was confirmed by several Ukrainian refugees as well as by American citizens recently repatriated from Poland. The text is a literal translation from a copy now in the writer's possession:

"On January 23, 1946, about 11:00 A. M., a runner from the village of Zavadka Morochivska came to our detachment and notified us that Polish troops in force attacked the villages of Bukhovitsia, Ratnitsia and Zboiska. The Poles, he continued, were looting homes, and beating and killing the peasants. Immediately our detachment began moving in the direction of these villages. We met peasants fleeing from the above-mentioned places who reported that a great many Poles had come early in the morning to Zavadka Morochivska and organized a savage butchery, in which several dozen inhabitants were brutally murdered. Later on, a woman came and, sobbing bitterly, began telling us what the Poles had done: 'They came to the village at dawn. All the men began to run to the woods, and those who remained attempted to hide in the attics and cellars but to no avail. The Polish soldiers were looking everywhere so that not a single place was left unsearched. Whenever they captured a man he was killed instantly; where they could not find a man, they beat the women and children. * * * My father was hidden in the attic and the Poles ordered my mother to climb up the ladder to search for him, These orders were accompanied by severe rifle-butt blows. When mother started to climb, the ladder suddenly broke and she fell down, breaking her elbow. Five Poles began to beat her again with rifle-butts and when she could not lift herself, they kicked her with their heavy boots. I ran to her with my four-year-old daughter and wanted to shield her, but the soldiers began to beat me and my child. I soon fell unconscious and awoke to find my mother and child killed and the entire village afire!'

"About two hours later we met more peasants from the villages of Zavadka, Mokre, Vysochany and Kamianne. They all said that the Polish army came in large forces, even bringing up tank detachments. We moved further to the village of Karlikova, where the day before the Poles had murdered 14 persons, among them a 70-year-old Catholic priest, Father S., his wife, daughter and a little grandchild *. The peasants told us that a half a dozen Polish soldiers came to the rectory and bayoneted the old, venerable priest when he refused to tell where his son was. Then they shot his wife and his daughter. The three-year-old granddaughter was in the arms of a maid. When she saw that her mother and grandparents were killed, she began to cry, calling to the maid, 'Magda, please hide me because the Poles will kill me.' At that moment a Polish soldier struck the child three times with a bayonet, killing it instantly. Then the same man fired at the maid, mortally wounding her in the abdomen. After that the rectory was set afire, as were other houses in the village. Those who tried to escape were instantly machine-gunned.

"In the village of Kamianne we were told that the same Polish troops who had plundered and murdered people in Karlikova, had massacred about seventy persons in Zavadka Morochivska and had burned the village completely. The

*The Ukrainian Catholic clergy by special permission of the Holy See dating back to 1596, were allowed to marry.

next morning we were on the move toward the village. From the hill above the village we saw nothing but smoldering ruins and a few moving shadows that looked more like ghosts than human beings. We came to the first skeleton of a house where we saw the corpse of a young woman with several bayonet stabs. A few yards farther lay a dead man and a twelve-year-old girl * * * An old mother was walking around and looking at the corpses of her children. She did not cry, her eyes were dry, but her mouth worked constantly. Nothing but a weak whimpering escaped her.

"A ghastly, hair-raising sight appeared when we moved into the cemetery-like village. Here and there walked ragged shadows. * * * 'Why did they kill her, why have they murdered her' lamented an old women, standing over the body of her daughter. A small man, looking barely alive, came to us: 'Come and see what they have done!' Showing us several corpses, he cried, 'There they are!' We saw three small children: seven months, two years and seven years old. All had been bayoneted. On the other side of the street was his dead wife, with several bayonet stabs in her breast and her legs badly mutilated. 'She is my wife,' whispered the man, 'and there is my old father. All have been murdered—only I remain!' From a half-burned house an eight-year-old boy came out with his seven-month-old infant brother: 'I'm all alone * * * Here is my mother and there lies my father * * * He was killed when he chopped wood to make a fire for us.' Another boy of fourteen showed us the place where his father, mother and sister lay dead. At the village we saw the bodies of four men who were machine-gunned when they tried to flee.

"In the village cemetery several dozen bodies had already been placed in a common grave. All were horribly mutilated—men, women, children, and old people alike met the same cruel death. Near the grave there were several corpses awaiting burial. One was that of an old man who had been shot while praying. The bodies of adult males and females showed bruises from rifle butts, barbed wire, and nails with which they had been tortured before being shot."

The report was accompanied by a list of people, inhabitants of Zavadka Morochivska. The bloody and brutal "repatriation action" was conducted by the 34th Infantry Regiment, WP (Wojsko Polskie), stationed in Sanok, southeast Poland. The mass murder of the Ukrainians was entrusted to the First Battalion of the same regiment. The entire action was directed by the Commanding Officer of the 34th Infantry Regiment, Colonel Pluto, whose headquarters were established in the neighboring village of Mokre.*

The report adds that those whom the Polish soldiers did not kill were beaten and mutilated. The latter were, of course, refused any medical attention on the part of the Polish Army and many people died later as a result of the beatings.

The entire village was thoroughly looted. The Poles took 17 horses, 34 cows, 137 chickens, 78 bushels of wheat, and other goods. Some 27 houses were completely burned. It should be added that the village was destroyed by the Nazis, and it was not until 1945 that the peasants were able to rebuild it with whatever material they could find.

After the mass murder of innocent Ukrainians, the Warsaw government announced that those killed in Zavadka Morochivska were members of the Ukrainian underground army, commonly known as banderivtsi," which was not true at all. Children, infants, and old people can hardly be accused of belonging to a secret partisan organization. The real reason that they were killed was that they were Ukrainians and simply had to be exterminated.

The rest of the villagers, who miraculously escaped the massacre, began slowly to build a new life again with the confident hope that the Poles would not molest them any more. Despite persistent orders from the Polish government to go east of the Curzon Line, these people preferred to remain in their native land.

But the Polish authorities were equally determined that they should not be left in peace. Demand after demand came from Moscow that all Ukrainians should be surrendered without delay and without exception.

2. SECOND RAID ON ZAVADKA

Therefore, on March 28, 1946, some two months later, the 34th Infantry Regiment's First Battalion, under the command of an unidentified Russian captain, made a surreptitious raid on Zavadka Morochivska in order to destroy its remaining inhabitants.

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*See the Appendix at the end of the pamphlet.

Part of the villagers took to the woods, but the rest were arrested and herded into the square near the school building. Here the Russian captain, wearing a Polish army uniform, declared that he would execute all because they refused to go to Ukraine and preferred to stay and help the Bandera groups plunder and weaken the "new democratic Polish state." He then selected 11 men and, before the eyes of their wives, children, and old people executed them without any judicial procedure.*

Among the executed were a few who had received wounds during the first massacre by the 34th Infantry Regiment from Sanok on January 23, 1946. After the execution the Soviet captain burned the last of the houses, leaving only the school and church buildings. Before his departure he addressed the few remaining women and old people:

"The same fate will be met by everyone who refuses to go to Ukraine. I, therefore, order that within three days the village be vacated; otherwise, I shall execute everyone of you. To prove that I have a good heart, I am not burning the school and church so that the women and children have a roof over their heads before they depart for the Soviet Union."

Despite the second massacre, the remaining villagers were more determined than ever not to leave their soil. With the majority of their neighbors killed and all of their houses demolished, they continued to live in dug-outs and nearby forests, existing on whatever they could receive from people in other villages. But this was not for long.

The Polish government in Warsaw and its Soviet sponsors were determined to make an example of the village of Zavadka Morochivska for other Ukrainian villages and towns. On April 13, 1946, the same 34th Infantry Regiment from Sanok sent two companies to the village with an express order to kill all Ukrainians on sight if they refused to go east of the Curzon Line.

The village was then surrounded on all sides with platoons of the Polish army. These were ordered to shoot every Ukrainian man, woman, or child. Some of the villagers were captured and tortured to death.**

The captured women were also beaten with bayonets and rifle butts or were kicked and stoned. The children were, too, subjected to the same brutalities. A few huts, set up since the last (second) raid on March 28, 1946, were burned, as was the school building. The few remaining old women and children were told that if they didn't leave for the Soviet Ukraine within three days they would all be executed. Yet these unfortunates, without a roof over their heads and nothing to eat except what was given them by neighboring villagers, decided to die on their native soil rather than go to Soviet Union.

But on April 30, 1946, a final raid was made upon Zavadka Morochivska by detachments of the Polish army. All inhabitants were forcibly driven to the village square and from there, under a strong armed escort, to the railroad station of Zahir. Here all these Ukraninians, numbering 78 persons (only 4 men among them), were handed over to the Soviet commissars. No one knows what happened to them thereafter.

Thus was a purely Ukrainian village totally destroyed by the Soviet-directed Polish army, even more thoroughly than its famous Czechoslovak counterpart, Lidice.

3. THE POLISH OFFICERS TELL OF THE MASSACRES

The documents listed below are authentic copies of testimony given by captured Polish officers and men who took part in the mass murder of Ukrainians in the village of Zavadka Morochivska. The testimony was taken from a pamphlet,

*Among those murdered thus were:
1. Maslink, Ivan, 46;
2. Masliuk, Theodore, his son, 25;
3. Masliuk, Mykola, another son, 29;
4. Klepchyk, Michael, 28;
5. Dobriansky, Vasyl, 35;
6. Schurkalo, Yakym, 40;
7. Kozlyk, Stephen, 18;
8. Kereleyza, Dmytro, 48;
9. Nechysty, Michael, 38 (who escaped with wounds during the first raid in January 1946);
10. Bilas, Ivan, 35;
11. Bilas, Theodore, 40.

**Among them were the following:
1. Dobriansky, Volodymyr, 15.
2. Dobriansky, Ivan, 22, severely beaten and then shot to death.
3. Masliuk, Orest, 27, mutilated legs, finished with rifle butt blows.
4. Bonchak, Volodymyr, 18, wounded and stoned to death.
5. Nechysty, Senko, 3, shot through the head.
6. Kereleyza, Ivan, 42, born in the United States, severely wounded.

Krwawym Szlakiem Stalinowskiej Democracji (The Bloody Path of Stalinist Democracy), published illegally in Polish by the Ukrainian underground and circulated in Poland.

No. 1. Testimony of Pvt. Wladyslaw Pawlowski

Pvt. Wladwslaw Pawlowski, born May 3, 1925, in the village of Buzany, District of Wroclaw, son of Stanislaw and Klementyna, Pole, Roman Catholic, graduate of fourth-grade school, at present serving with the 34th Infantry in Sanok, deposes:

On January 22, 1946, our Second Battalion received an order from Colonel Pluto to be prepared to raid the following villages: Morochiv, Mokre, and Zavadka Morochivska. We were most positively ordered to take from the Ukrainians in these villages everything they had—shoes, clothing and anything which could be found in their possession. * * * The next day we received another order to move on the village of Zavadka Morochivska in order to burn it. In the village of Mokre another battalion was stationed which was to serve as our reserve force. Our battalion was assisted by some 20 special UB agents from Sanok.

The main task was performed by the Fourth and Fifth Companies, which were specially instructed in Sanok before their departure for the village. But I am unable to divulge the nature of these instructions. My Sixth Company as well as the Heavy Weapon Company (CKM) took up positions around the village with the purpose of protecting these companies which were engaged in action Therefore, I did not take part in what was going on in the village.

(Signed) WLADSYLAW PAWLOWSKI, pvt.

No. 2. Testimony of Officer Candidate Franciszek Kutylo

Officer Candidate Franciszek Kutylo, born May 15, 1918, In Kamien, District of Lesko, son of Teofil and Zofja, nee Kurdziel, Pole, Roman Catholic, graduate of 6th class of general school, at present Officer Candidate with the Fifth Company, 34th Inf. Regiment, 8th Division in Sanok, deposes:

Since September 1945 I was personally taking part in major terroristic operations in order to compel the Ukrainian population to submit to repatriation orders in the following villages: Dubrivka Ruska, Sianichok, Zahutyn, Prosik, Storozi Velyki, Storozi Mali, Zavadka Morochivska and finally Volycia, where I was captured by the UPA. Most of the terroristic action against the Ukrainians was directed by Lt. Lewicki and his deputy Mogulski. Often these raids were performed by the First Battalion, especially in the vicinity of the town of Bukivsko, and after each of such raids the soldiers sold their loot and held drinking orgies. During our bivouac in Dukla, our Third Battalion took part in forcible repatriation of Ukrainians in the villages of Tszoka and Tylava. All the inhabitants of these villages were expelled forcibly from their dwellings, and all their belongings were taken away from them. Lt. Lewicki, who was in charge of the repatriation of Ukrainians, amassed a great amount of loot. On January 25th, during the action in Zavadka Morochivska, our Battalion waited as a reserve in Mokre and was scheduled to support the Second Battalion which moved on Zavadka Morochivska. Therefore, I did not take part in the murder of inhabitants of Zavadka Morochivska.

(Signed) FRANCISZEK KUTYLO, *Podchorazy*, WP.

No. 3. Testimony of 2nd Lt. Bronislaw Kuzma

2nd Lt. Bronislaw Kuzma, born October 13, 1917, in Leningrad, son of Ignatius and Adolfina, nee Kotelow, Roman Catholic, White Ruthenian, graduate of 7th class of general school, at present Commanding Officer of the Fifth Company, 2nd Bn. 34th Inf. Rgt., 8th Division in Sanok, deposes:

The Commanding Officers of our 34th Infantry Regiment is a Soviet officer, Colonel Pluto. The Commanding Officer of the Second Battalion, to which my Fifth Company belongs, is also a Soviet officer, Captain Gutowski. Together with my Battalion I took part in many actions to expel Ukrainians from their villages, especially in the village of Prybyshiv. We had an absolute order to expel all Ukrainians and to confiscate their belongings, which were to be brought to the quarters of our captain in the barracks. * * * I had heard quite often that the Banderovci numbered many thousands, and that not so long ago a group of 6,000 had arrived from Ukraine. I knew that they were fighting for the independence of Ukraine and against the Soviets. We had a specific order to kill Banderovci wherever possible. * * * On January 23rd or 24th we received an order to move on the villages of Morochiv, Mokre and Zavadka Morochivska. Captain Gutowski issued an order to search for arms, but at the same time to confiscate

boots and everything that could be taken. We had done this in the villages of Morochiv and Mokre. Later we moved on Zavedka Morochivska. On the road we saw one Banderovits who just came out of the woods. Pfc. Kucbynski from the Fourth Company and two other soldiers fired and wounded the man, who fell instantly. Corpp. Olszewski from the Fourth Company and two other soldiers ran toward the wounded man. Pvt. Witold Osmianchuk from Bialystok stabbed him with his bayonet and smashed his head. The others also beat him until he was dead. Then they took off his boots, coat and money; how much I don't know.

Later on we moved on Zavadka Morochivska. There we began to do the same things which we had done in other villages, following the orders of Captain Gutowski. But suddenly we were attacked by the Banderovci, and firing began. Thirteen of our men were killed and eight wounded, and we lost our horses and wagons with ammunition.

The next day Colonel Pluto issued an order to the Second Battalion and the Third Battalion to burn Zavadka Morochivska, while the Third Battalion was dispatched as a reserve force, to the village of Mokre. Upon the order of Colonel Pluto, the Commanding Officer of the Third Battalion, Captain Kozyra, was put in charge of action in Zavadka Morochivska, despite the fact that his battalion was in Mokre. Captain Gutowski, our Battalion's commander, was at that time with the Third Battalion. The Fourth, Fifth and Sixth Companies were sent to the center of the village, where they burned houses and killed everyone who was found there. The Heavy Weapon Company took up a position outside the village so that no one could escape alive. I and my company were burning the center of the village and killing Ukrainians. Personally I stabbed to death a Ukrainian of about 40. I slit his stomach and later stabbed him a few more times. He was the only man I killed there. But there were some among us who were enjoying this butchery. They killed children, took out their eyes or cut women's breasts. Among such sadists were Sgt. Stanislaw Kucko, 27, from my Company, Sgt. Michniewicz, 29, from the Fourth Company, and Corp. Romanowski from the Sixth Company. In the mass murder of the population in Zavadka Morochivska, besides me, the following officers took part: Lt. Kopys, 35, 2nd Lt. Kisiel, 29, Warrant Officer Ostrowski, 40, Lt. Terlecki, 24, 2nd Lt. Bogdanowicz. The next day, after burning the village and murdering the majority of the population, our Second Battalion received high praise from Colonel Pluto for a well-executed action.

(Signed) BRONISLAW KUZMA, *2nd Lt.*

4. Other acts of terror by the Soviet-led Polish Army

The mass murder of Ukrainians in Zavadka Morochivska was typical of others in villages destroyed and annihilated. In the beginning of 1946, the Soviet-controlled Polish army, known as WP (Wojsko Polskie) began to apply terroristic methods to force the Ukrainians to go east of the Curzon Line. With such slogans as "Death to Ukrainians," entire regiments of the Polish army, staffed with Soviet officers, raided the Ukrainian villages and towns, looting and plundering dwellings and killing all Ukranians, whether men, women or children. Such action lasted through the entire year and was again intensified in the spring of 1947, when the Ukrainian resisters assassinated Gen. Karol Swierczewski, Polish Vice-Minister of Defense. An ardent Stalinist, he had taken part in the Spanish Civil War, and under the name of "General Walter" commanded a brigade against the Franco forces. When the Polish puppet state was organized, he was made responsible for the deportation of Ukrainians.

Here is a partial report concerning acts of terror committed by the Polish army against the Ukrainian population:

(1) On March 27, 1946, a big force of the Polish army raided the villages of Kamianne, Kozhushne, Morochiv and Mokre. The village of Kamianne was completely razed and burned, while the inhabitants were maltreated and tortured.

(2) On March 28, 1946, the same detachment of the Polish army raided the village of Vysochany, from which it took all the cattle.

(3) On March 29, 1946, the following villages were raided: Karlykiv, Prybyshiv, Kulashne and Berezovytsi. In the first village the Poles killed 6 persons: Michael Zachar, 58; Dmytro Luchka, 44; Dmytro Syvy, 63; Ilko Haysan, 71; Andrew Haysan, 18; Paraska Levitsky, 50. In Prybyshiv the Poles set fire to both ends of the village and wounded a small boy. The village of Kulashne met the same fate. In the village of Berezovytsi the Poles burned all the dwellings except three and took all horses and cattle.

(4) On March 30, 1946, the Polish army attacked the villages of Seredne Velyke and Lukova. Some 130 dwellings were burned in Seredne Velyke while all inhabitants of Lukova were forcibly expelled to the Soviet Union.

IV. Ukrainians Sent to East Prussia and Other Parts of Former Germany

1. SOVIET AND POLISH OFFICIAL FIGURES

Just how many Ukrainians were sent to Soviet Ukraine and how many of them were killed outright is a deeply guarded secret of the Soviet and Polish totalitarians. But only on May 7, 1947, TASS, official Soviet news agency, reported that the Polish-Ukrainian repatriation action had been terminated. It added that the repatriation of Ukrainians east of the Curzon Line and of Poles west of that Line had taken place in "an atmosphere of mutual agreement and accord."

On February 19, 1947, the Associated Press reported from Warsaw that the Polish government hoped that at least 5 to 6 million Poles would settle in the new (German) territories. Even, according to official Polish sources, during 1946 some 1,107,623 Poles were repatriated, and at least 1,653,627 Germans were expelled at the same time to the West. Actually, the number of expelled Germans was much higher. According to Vice-Premier Gomulka, the remaining Germans, numbering about 400,000, would be expelled in 1947. Up to February 19, 1947, 97,935 Ukrainians were sent to the Soviet Union in accordance with the Soviet-Polish pact.

2. UKRAINIANS GO TO EAST PRUSSIA

While there was no secrecy about the Poles forcibly handing over Ukrainians to the Soviet Union, it was not known that the Warsaw government was also sending Ukrainians to East Prussia, Silesia and Pomerania. The London *Times* reported on June 24, 1947, that many thousands of Ukrainians had already been settled in East Prussia, from where Germans had been expelled. According to the Potsdam Agreement, East Prussia was divided into two parts: the northern part, with the great commercial city of Koenigsberg (now Kaliningrad), annexed by Soviet Russia and settled with ethnic Russians; the southern part, given to Poland, and where the Ukrainians are being sent under constraint. According to well informed sources, to date over 15,000 Ukrainians have been brought to East Prussia, but actually their number might be much higher. In Warsaw the official version of these deportations of Ukrainians is that they are implacable enemies of the Soviet Union, and that they maintain close connections with the Ukrainian nationalists on the Soviet side, but above all, that they are supporting the Ukrainian underground which causes considerable trouble for both Poland and Soviet Russia.

3. DEPORTATIONS FROM THE REGIONS OF KHOLM AND PIDLIASIA

More detailed information about the forcible deportation of Ukrainians from the northern province of Kholm and Pidlisia arrived in the summer of 1947. The inhabitants of these regions are Orthodox Ukrainians who came under Polish rule after 1919.

The over-all policy concerning Ukrainians is barbarous and inhuman. These people, especially Orthodox Ukrainians from the Kholm and Pidliasia regions, are given short notice to prepare for deportation. Although they are permitted to take their belongings, this is practically impossible since there are no means of transportation. When gathered at the "collecting points," the Soviet agents make thorough inspections and select men whom they think might be useful for their sinister purposes, such as intelligence work or as candidates to slave labor camps in Soviet Russia.

Significantly, despite the great tragedy that befell the Ukrainians west of the Curzon Line, the government of the so-called Ukrainian Soviet Socialist Republic in Kiev has kept a strict silence about these deportations! Yet in 1939, after the Hitler-Stalin pact, Soviet Russia invaded these territories as a self-appointed "protector of the Ukrainian and White Ruthenian peoples"!

V. Letters Describing Living Conditions in Red Poland

(These letters were written by Ukrainians from Poland to their relatives in the United States. For obvious reasons, the names of the senders have been omitted. Letters appeared in Svoboda, the oldest American-Ukrainian daily in the United States, under dates of April 30, 1947, and June 24, 1947.)

Letter No. 1 written from the village Stefkova, Lisko District, Poland, to relatives in the State of Pennsylvania and dated March 5, 1947

The Poles expelled all the people from the village and sent them behind barbed-wire enclosures. Many escaped to the woods so that no one remains except Polish soldiers. Your brother lies dead beside his coffin. Undoubtedly you

wonder why I was not expelled. It is because my wife was born in America and her American passport gave her adequate protection for some time. As for myself, I had to flee with the children, but was caught by the militiamen before reaching the woods. At the same time they arrested my wife and were already taking her to the railroad station, but she had shown the letter from the American Ambassador, and was released. I was being led to the execution place when my wife came to the village. I was beaten up and covered with blood, and she hardly recognized me. But she saw one of our children sobbing and following me, and began to implore the Polish soldiers to release me. When she produced the American passport, I was set free. * * * What we live through today is worse than in any other period of Ukrainian history. Even during the Mongolian incursions, Ukraine never suffered so much as now. I understand why the Ukrainian people have to fight for the right to live on their ancestral land. Only, at present, our people lack support and strength. * * * Those who refuse to pray or profess to be Communists, should come for a few weeks at least to the Soviet Union. Then, we are sure, they would believe in God, and would consider communism the most dangerous disease of mankind. * * * The clippings, sent to me by you are widely read and passed from hand to hand as far as Kiev itself.

Sincerely,

M. * * *

Letter No. 2 written to a Ukrainian family in Michigan by its relatives from Poland on April 22, 1947. The letter is from Sokal District, near the Soviet-Polish frontier

I don't know whether you received my previous letters, because there are various reasons why you might not have. You write us and tell us: "Hold on, a better future is coming." We surely are trying hard to hold, but every one of us asks: "When is this better tomorrow coming?" I am writing this letter through the same channels as before. * * * What will happen next, we shall see. Last year, as you probably know, they tried to "repatriate" us, but rather unsuccessfully. Today again they are starting the repatriation propaganda. It seems to be the policy to resettle all peasants from the East on former German lands in the West. Therefore, no one even wants to think of working, for nobody's future is safe. * * *

You asked me about our present frontier. It runs now from the town of Biala Podlaska south along the Bug River, by-passing the cities of Kholm, Hrubeshiv, to the town of Krystynopol, Thence, along the Solokey River west to the town of Uhniv.

Don't think for a moment that our villages and cities are the way you left them. * * * Only names remain, the villages themselves have either completely disappeared or are so damaged that but a few houses remain standing. For instance, such villages as Belzeyiv and Madzarky were completely leveled. Other villages around us had somehow escaped total destruction and still have a few nests for a few families Our village, which before the war had about 140 houses, now has only 70 left and these are giving shelter to some 360 people. Of these, 200 are Greek Catholics and the rest are Roman Catholic. According to official estimates, our village belongs to the most populated localities in the area. The other villages have still fewer families: Pykoschyna—16 families; Sebechiv—55; Verbizh—16; Moshkiv—16; Shmytkiv—5; Savchyn—30; Opilsko—1; Boyanychi—5; Zavyschychi—23; Boratyn—30; Cebriv—5; Peremysliv—44; Vyzhniv—16; Mitsiv—15; Dovzshniv, Zhniatyn and Lisky about 65 families each.

It is evident that such a number of people cannot take care of harvesting. The fields that once were like flowering gardens, are deserted and uncultivated. Such is the general view of the Polish Ukrainian frontier zone. * * *

Letter No. 3 written by a Ukrainian deported to East Prussia

(The letter was published in America, Ukrainian Catholic paper appearing in Philadelphia, on July 4, 1947:)

DEAR BROTHER AND SISTER-IN-LAW: I received your letter in which you write that a package containing clothes has been sent to us. Upon receiving the letter we were all greatly relieved that we would be able to clothe ourselves a little better. Not only we, the older folks, but our daughters and grandchildren were also glad that a package was coming from America.

But suddenly on June 8, 1947, Polish and Russian troops began looting and burning our village. All of us, young and old, men, women and children, were rounded up and herded outside the village. There they took all men between 18 and 50 and put them on special trucks and drove off. All those remaining were

driven into the mill and were kept there like cattle for two days without bread or water. * * * Later on we were sent to the railroad station under strong armed escort and loaded into freight cars. Without giving us bread or water, they brought us to East Prussia, to a place about 40 km. from the Baltic Sea.

Such is our fate, dear brother and sister-in-law. But all Ukrainians share the same lot. From our new address you will see what has met us in our old age. They have separated us from our children, and husbands from their wives and so on. * * * We are almost 75 years old, yet we don't fail in spirit. We know hunger and privation, persecution and chicanery on the part of those barbarians who are telling us and the world all over that they came to "liberate" us! It is a big lie! Please tell all those in America who still defend the Bolsheviks to come and live with us. We are sure that within a month they would be completely cured of their admiration and enthusiasm. * * * Tell every American how the Soviets persecute the Ukrainian people.

Yours * * *

(Signature)

Letter No. 44, written from the Pidliasia Region

* * * Ukrainian Pidliasia has ceased to exist as such. All people from the Volodovschyna District were exiled to the West in the middle of June. The District of Bilsko is in the midst of deportation to the so-called recovered territories, with the purpose of building a "new order" in Europe. To what part of former German lands our peasants will go, we do not know. Theoretically, they are allowed to take with them all their belongings, but this is hardly possible because of lack of transportation and the short notice given before deportation. Land, household goods are being confiscated by the communist rzad (government) for the benefit of the Polish proletariat. * * * From what is known here, the Ukrainian deportees are being sent to colonize Silesia and Pomerania in such a manner as not to permit their settling together, but are scattered among Polish families. Furthermore, they cannot have their own schools or churches. Now we hear the same action is vigorously pursued in the entire region of Kholm.

E. P.

July 20, 1947.

Letter No. 5 written by a Ukrainian living now on the Curzon Line, Poland, and printed in Svoboda, February 26, 1948

The hell which our Ukrainian people underwent on both sides of the Curzon Line is indescribable. First it was the forcible "repatriation" to what they called "our Soviet fatherland," and now it is "voluntary resettlement" in the German territories in East Prussia, Pomerania and Silesia. Actually our people did not want to go, but were forcibly expelled by the Polish lackeys of Stalin. In fact, the Ukrainians fought with the greatest stubbornness and determination against expulsion from their ancestral lands. * * * But their efforts were futile. * * * By organizing armed bands of civilians and sending them into Ukrainian villages, the Warsaw government has devised a very ingenious method to get rid of Ukrainians. What the Poles did there was worse than any crime committed in the times of the Mongolian invasions of Ukraine. By day and night they raided villages and towns, burned houses and buildings, arrested and beat people for refusing to leave their villages. Our Catholic priests and teachers were the first to fall victims to this unbounded Polish bestiality. * * * Even our Bishops Kocylovsky and Lakota did not escape the horrible fate meted out by the Polish militiamen. They have been arrested and forcibly deported east of the Curzon Line. The Ukrainian resistance, the UPA, fought these inhuman deportations but eventually the Poles brought up several army divisions and expelled great numbers of Ukrainians. Those who had somehow escaped from being sent to the Soviet Union had later been rounded up and departed to German lands in the West, but all able-bodied Ukrainians had resisted and fought with unprecedented courage. In this struggle Red Poland has lost its best military man, General Swierczewski, and several other high officers. In retaliation the Polish Communists have leveled hundreds of Ukrainian villages—wherever they went, hundreds of corpes remained. * * * I am writing this letter at night for fear of being seen. * * *

Letter No. 6 describing deportations of Ukrainians by Poles from the Lemkivschyna region

(This letter was printed in issue Number 7 of Pravda, a paper published by the immigrants from Carpatho-Ukraine in Philadelphia. The paper is favorable to Russia and her policies:)

JANUARY 1, 1947.

DEAR AUNT AND UNCLE: I am writing this letter because I want to describe to you the deportations of Ukrainians. The Poles have issued an order: Musimy wysiedlic wszystkich Ukraincow do jednego! (We have to resettle every single Ukrainian.)

This is only a part of what has happened with the Ukrainians on the frontier between Poland and Western Ukraine, namely, the districts of Lubachow, Yaroslaw, Przemysl, Sanok, and others.

It began in November 1945. Huge posters were distributed exhorting all Ukrainians to go voluntarily to the east. It became evident, however, that none of them would go there of his own free will. The Poles then devised a clever plan: they organized armed bands which began to raid the defenseless Ukrainian population and thus attempted to compel it to go to the Soviet Union.

In the village of Korytnyky near Przemysl, the Poles murdered several villagers and threw their bodies in the San River. In another locality, Malkobychi, the same band murdered 70 people, and all their homes were looted. There were many such raids. The people were terrorized to such a degree that no one knew what to do or whom to ask for protection. There were those villages which organized impromptu defenses, and we had times worse than those during the Tartar invasions three centuries ago. When the Poles approached at night, the bells would ring and the people would run for their lives. To their defense finally came the Ukrainian Insurgent Army, commonly called "banderivtsi." They not only were able to protect the villages, but also to destroy armed bands sent by the Polish government. But later on the Warsaw government sent many troops which raided villages, forcibly expelled and instantly killed those unwilling to go.

Then came the Soviet "repatriation" commissions which took all those who were rounded up by the Polish army. On many occasions our "boys from the woods" had armed encounters with the army, and regular warfare was going on for many months. The Polish army was even compelled to bring up artillery.

Dear Aunt and Uncle! The war is not finished here! There is not a day or night without cannonade and firing! On the other side of the frontier the city of Sambor several times was in the hands of the Ukrainian Partisans! These partisans are fighting for the liberation of our country. Thanks to them, today we are still alive.

The Polish "democratic army" wanted to destroy the Partisans at any cost, but to no avail. Again during the severe winter of 1946 (February 15) they attacked our village. We had time to flee from the house with the small children and went to our sister who was married to a Pole. But at 4:00 A. M. the Poles came after us. They surrounded the village with machine guns and told people to get ready to go. Neither the crying of old women nor the pleading of the few men helped any.

Dear Aunt and Uncle! It is impossible to describe everything we went through. We watched from the attic how these people were taken away from the village. * * * We came back to our village after four weeks. We found nothing there but bare walls. Here a Ukrainian has no rights or importance. He is practically outside the law. Finally they arrested and deported our Bishops, and most of our priests were sent to Soviet Russia. The Ukrainian Greek Catholic Cathedral in Peremyshl (Przemysl) was transformed into a Polish church.

Dear Aunt and Uncle! We had survived three major fronts during the last war, yet it seemed much easier than to live now in "peace."

CONCLUSION

The practice of mass deportations of people who came under the totalitarian domination of Soviet Russia and her satellites—resembling, as they do, the deportations by the Nazis is contrary not only to the Charter of the United Nations, but to the principles of humanity everywhere. The scale of this "resettlement" and the conditions under which it is conducted are without precedent in history.

No one, seeing and knowing its bestiality, can doubt that it is a crime against humanity for which history will exact a terrific retribution.

The present Polish government (for which the Polish people are not responsible), has perpetrated unspeakable horrors and crimes upon the defenseless Ukrainian population that found itself within the frontiers of the "new" Poland. Acting upon orders from Moscow, this government has expelled several million Germans from the region east of the Oder-Neisse Rivers. The plan was that that territory should be colonized by the Poles and thus made an integral part of a Soviet-inspired Polish state. But there are not enough Poles who could be successfully organized to administer these lands as they were administered in the past. So an evil plan, contrary to the principles of human rights, was engineered.

Those Ukranians who, despite extreme pressure and shameful persecution combined with mass murder, refused to go to the despotic empire of Stalin, were thus sent to these German territories. Just how many thousands were so far expelled and settled on the former German lands is impossible to ascertain. Unconfirmed reports, based on numerous letters from those who were deported, as well as the accounts of refugees, indicate that the number may soon reach 100,000 people. One of the most dismaying aspects of these expulsions is the fact that during the course of their execution many thousands of human being have simply disappeared.

These Ukrainians, it is recalled, had been living on the territories from which they were expelled for many centuries, and had not asked to be sent anywhere. Not part of any Axis alliance or partnership, the Ukrainians had unjustly suffered incredible punishment meted out by the Soviet quislings ruling Poland.

What fate befell these Ukrainians, who were so brutally ejected from their ancestral soil, is not hard to guess. Those who went across the Curzon Line have completely disappeared in the vast slave empire which is Soviet Russia today. No one writes any more from the Soviet paradise. Those deportees who were still strong and healthy were immediately sent to war industries now in full swing in Central Russia. Sick, incapacitated people were simply dumped in Soviet kolkhozes and forced to work under communist bosses.

Those who were forcibly deported to East Prussia, Pomerania, and Silesia had been separated and mixed with the native Poles. Whether Catholic or Orthodox, these Ukrainians are forbidden to have their own churches, still less their own Ukrainian schools. Even to speak their own native tongue has become a crime of huge proportions. The Ukrainians are now being told that their dissatisfaction with the totalitarian regimes of Soviet Russia and Poland is being "artificially aroused by the American imperialists." Such classification is ominous in the countries behind the Iron Curtain.

What has happened to the Ukrainians in what is now Poland can easily happen tomorrow to any other people in the world, should they fall under the rule of Russia or her communist puppets.

Unlike many other victims of deportations, such as the Sudetens and Hungarians from Czechoslovakia, or the Germans from Polish-occupied territory who were deported to the West, the Ukrainians have been deported East. Therefore, fewer of them can be reached by our aid, even if such aid can be organized. But there are thousands of Ukrainians who either were deported to Nazi concentration camps or escaped from Soviet slavery. Many of those have been returned to Russia as Soviet citizens under the infamous Yalta Agreement.

But the thousands who remain outside of the Iron Curtain must be saved. If the IRO is to mean anything, and if the United Nations' Charter on human rights is to be observed, these Ukrainians should be given full assistance and protection.

Today when our civilization crumbles before the dark force of the East, the hope of all mankind is directed to our country, not only for material assistance, but for spiritual guidance as well. America's leadership must actively oppose the forces that threaten the very foundation upon which the greatness of this nation was achieved: the freedom of man. When this freedom is curtailed anywhere for reasons of race, religion, or nationality, our country and our civilization are in danger of destruction.

APPENDIX

The victims, whose massacred and mutilated bodies were photographed by the members of the Ukrainian underground, include the following:

1. Bilas, Catherine—60, was burned alive in her house;
2. Bilas, Melania—50, was stabbed and then put on a pile of wood and straw and burned alive;
3. Kereleyza, Maria—41, born in the United States (an American citizen!) was stabbed seven times; all her toes broken, right hand broken in three places; her left breast cut off; head split in two;
4. Kereleyza, Anna—16, her daughter; head broken, a stab in her right leg over the knee;
5. Maksym, Andrey—50, burned alive;
6. Maksym, Anastasia—daughter-in-law, left leg badly mutilated, right leg broken, three bayonet stabs in left breast and five in the right; gashed stomach, head split in two;
7. Maksym, Stephen—10, three bayonet stabs in the breast, and a rifle shot in the neck;
8. Maksym, Anna—1, gashed stomach;
9. Maksym, Catherine—4, stabbed with a bayonet in the mouth; two stabs in right breast, gashed stomach;
10. Tomash, Catherine—both breasts cut off, five stabs in the stomach, mutilated legs. She lived one hour after the massacre and recognized the Polish civilians from the village of Niebieszczane, who took part in the criminal performance;
11. Tomash, Maria—daughter, nose and tongue cut off, eyes gouged;
12. Tomash, Anna—another daughter, nose and tongue cut off, eyes gouged;
13. Tomash, Stephen—son, nose and tongue cut off, eyes gouged;
14. Nechysty, Anna—45, shot through the heart;
15. Nechysty, Catherine—daughter, 20, wounded in leg and burned alive;
16. Bilas, Eva—30, bayonet stab in the back;
17. Bilas, Theodore—65, bayoneted to death;
18. Bilas, Ivan—46, shot in the back;
19. Bilas, Marie—33, tongue cut off, right hand broken, four bayonet stabs in the stomach and four in the leg;
20. Bilas, Sophia—7, mutilated legs and stomach;
21. Nechysty, Taras—3, shot through left shoulder with a dum-dum bullet;
22. Nechysty, Michael—adult, wounds in both legs and hands, escaped alive;
24. Nechysty, Magdalena—17, wounded and burned alive;
25. Nechysty, Sophia—8, wounded and burned alive;
26. Nechysty, Maria—6, wounded and burned alive;
    (The tragedy of the Nechysty family was reported by the father, Michael Nechysty, who was wounded and left in his burning house. However, he was able to escape during the first raid, but was subsequently killed in another raid.)
27. Dudenchak, Osyp—40, two bayonet stabs through the heart;
28. Dudenchak, Anastasia—40, shot through the heart;
29. Izdebsky, Eva—shot through the back;
30. Izdebsky, Catherine—6 months old, throat cut with knife and shot through the head;
31. Bonchak, Dmytro—50, beaten to unconsciousness with rifle butts and burned alive;
32. Bonchak, Ivan—brother, shot through the stomach and burned alive;
33. Klemchyk, Anna—throat slit, and shot through the heart;
34. Cyhanyk, Vasyl—wounded with a dum-dum bullet, died after 3 weeks;
35. Cyhanyk, Catherine—his mother, skull broken, shot in the neck;
36. Cyhanyk, Ivan—bayoneted through the heart;
37. Hrynio, Ivan—shot in the neck;
38. Izdebsky, Michael—shot through the heart;
39. Izdebsky, Peter—brother, shot through the head;
40. Kozlyk, Catherine—head split open;
41. Kozlyk, Anna—shot through the breasts;
42. Kozlyk, Eva—shot through the breast;
43. Klemetchyk, Dmytro—shot in the neck and finished with a bayonet;
44. Kereleyza, Catherine—shot through the heart;
45. Kereleyza, Yaroslav—son, throat slit;
46. Kereleyza, Peter—brother, shot through both shoulders;
47. Bonchak, Osyp—shot through the heart;

48. Bonchák, Catherine—his wife, shot through the heart;
49. Bonchak, Maria—shot through legs and hands;
50. Zhadorsky, Nestor—shot through both legs;
51. Nechysty, Andrey—bayoneted;
52. Nechysty, Ivan—brother, shot twice through the heart;
53. Bilas, Catherine—shot through the back;
54. Dobriansky, Mykola—wounded in the stomach; died after six hours.

POLITICAL SIGNIFICANCE OF USSR GENOCIDE

Mr. DOBRIANSKY. (3) Finally, we must not overlook the geopolitical significance of Soviet national genocide. Implemented throughout by national genocidal activity, Soviet action is applying General Haushofer's geopolitical principles in the following clockwise directions. (*a*) on the basis of the Zange principle, the Soviet pincers of Leningrad and completely Russified Koenigsberg have already embraced the victim nations of the Baltic; (*b*) Siberia, which is being built into a huge reservoir of manpower and industry with deported and doomed non-Russian nationals, has become the Soviet base of Asiatic domination and a powerful springboard to Alaska and the western Canadian coast.

PENETRABILITY OF THE IRON CURTAIN

Senator MCMAHON. You give evidence of knowing considerable of what is going on behind the so-called iron curtain.

Mr. DOBRIANSKY. That I do.

Senator MCMAHON. It is not as impenetrable as the name suggests, is it?

Mr. DOBRIANSKY. That is right.

Senator MCMAHON. You not only get information out, but do you get some information in there occasionally?

Mr. DOBRIANSKY. We have channels.

Senator MCMAHON. We won't say what they are, but you do have them, do you not?

Mr. DOBRIANSKY. Appropriate authorities in our government are well acquainted with and through us.

Senator MCMAHON. Yes, but the fact of the matter is that those who say that it is impossible to get material in behind the iron curtain know it is not a fact.

OPPORTUNITY TO CARRY ON A PSYCHOLOGICAL CAMPAIGN

Mr. DOBRIANSKY. It is not a fact. In fact, I think we could carry on a great moral and psychological campaign, and be able to have it very effective through infiltration of what we have to say through the iron curtain.

Senator MCMAHON. Providing we went at it intensively enough.

Mr. DOBRIANSKY. That is right.

Senator MCMAHON. And the situation you describe as existing in the Ukraine is duplicated in some other borders of the Soviet?

Mr. DOBRIANSKY. On the whole porphyry. In White Russia, in the Baltic countries, in the Ukraine, down into the areas that were formerly the Don Cossacks, the Georgians, and others. In fact, I might mention that there is a Promethian League which, you see, consists of leaders of these various nations. They keep in close contact with each other and they are able to follow through much of this information which I get into my hands.

WE ARE DEFICIENT IN EXPLOITING OUR OPPORTUNITIES

Senator McMAHON. Do you think we are exploiting that to the best advantage today?

Mr. DOBRIANSKY. No, sir. I think we are extremely deficient in that respect. In fact, we are far inferior to the Soviets in the matter of systematic infiltration and subversion. I think the possibilities, the real possibilities in our contest with the Soviet Union as concerns a possible victory without war lie in just that area of psychological warfare.

Senator McMAHON. Tearing down?

Mr. DOBRIANSKY. Yes.

Senator McMAHON. I agree with you.

Mr. DOBRIANSKY. I thought you would.

VOLGA-CAUCASUS ATROCITIES

(*c*) In the direction of Iran and the central Middle East, the Volga-Caucasus base has been completely solidified with the annihilation of the Volga-Germans, the Don and Kuban Cossacks, and the Chechens and Ingush peoples and with the current Russian colonization of the area; and, lastly, (*d*) by liquidating the Crimean Tartars, the Soviets, through similar colonization of Crimea, which strategically dominates the mouth of the Dnieper, have established a "Stuetzpunkt" in relation to Ukraine, which is the vitally important springboard to the Dardanelles, Balkans, and central Europe; but, because of the millions involved, their genocidal and colonizing efforts have not yet succeeded in the total embracement of Ukraine, thereby necessitating a strategic dependence on Ukraine's western neighbors, Poland, Rumania, Czechoslovakia, and Hungary as the western line of defense. Thus national genocide has its military and geopolitical reasons; but whatever the reason, murder and biological destruction are undertaken to destroy nations, and the implications of this for the security and well-being of the peaceable communities of the world are amply conveyed above.

When one scans over these frightful events of genocidal reality one can only view with puzzled wonderment the wholly misapplied arguments advanced by the ABA spokesmen. For their sincere expressions of good intentions and warm feelings toward the Ukrainians and other enslaved peoples behind the iron curtain we are profoundly grateful.

Senator McMAHON. What do you do at Georgetown?

Mr. DOBRIANSKY. I am a teacher of economics.

Senator McMAHON. Are you educated in the law?

Mr. DOBRIANSKY. No, sir; I am not going to take up the legal points.

Senator McMAHON. I was wondering if you were going to make a legal argument against their legal argument.

Mr. DOBRIANSKY. No.

But paradoxically enough, these good intentions, coupled with a mode of reasoning exercised in a contextual void of any experiantial understanding of what had been and is actually going on behind the iron curtain have led them to conclusions that are capable of destroy-

ing every remnant of hope enkindling the hearts of these peoples for continued existence and ultimate salvation. Against the background of this mass Ukrainian experience with calculated Soviet genocide, their chief arguments opposing the ratification of the Genocide Convention appear by sheer contrast outstanding for their utter confusion, their flagrant naïveté, and, I regret to say, for their inadvertent apology of Soviet genocidal practice.

Senator McMAHON. That is a mouthful.

Mr. DOBRIANSKY. I left out "nefarious." That would have been more than a mouthful.

Senator McMAHON. I'm going to get you to do my denouncing.

Mr. DOBRIANSKY. I am available, sir.

Let us briefly review them:

ABA ARGUMENTS ANSWERED

(1) That the convention does not apply to the peoples behind the iron curtain. If this is so, then it absurdly reduces itself to applying to no people anywhere, at any time. The whole intent, the wording, and the objective of the convention are unmistakably aimed at the prevention of the very genocidal acts recited here, by outlawing such mass murders and biological destruction. Indeed, the living monuments of Soviet genocide and tyranny are the millions of displaced persons scattered about the free world today.

(2) That the convention limits the commission of crime to private persons. This logically desperate argument is bluntly contradicted by an unsophistical reading of article IV, which, in its obvious reference to state or governmental function, aims at any unambiguous fixation of responsibility for such crime on specific persons. The omnipotent power of the state, in the eyes of some, will therefore be unable to serve as a shield of justification for such criminal acts, as article IX specifically provides for responsibility of states for acts of genocide.

(3) That the convention is limited as to reasons. This is patently untrue. Reasons for criminal acts or motivation in genocide are not limited by the convention. Aside from situations of reasonable self-preservation and the like, in the manner that criminal homocide is established when one kills a human being qua human being, whether for money, love, grudge, and so forth, criminal genocide is established when one nation or state destroys another as a nation, whether for economic, strategic, religious, or political reasons. In the case of the Soviets, every genocidal act, as indeed any act, is political in nature, and anyone who opposes it, is by definition, "an enemy of the state."

VALUES OF THE CONVENTION

(4) That the convention is of no value. It is a logical truth that where objects are not properly understood, no value can be assigned to them. This applies poignantly to the baseless stand taken by the ABA representatives. We are not obtuse to think that the Genocide Convention will, under current conditions, effectually resolve this vicious issue of genocide, but we possess at least that requisite vision and perspective to appreciate its significance as a vital step in the right and necessary direction. Its specific values are as follows: (*a*) it will impart immense and genuine hope and strength to the suffering

hearts and minds of the enslaved Ukrainians and others who are persistently haunted by the deathly axe of Soviet national genocide; (*b*) it will focus the moral condemnation of the world on the business-like Soviet genocidists and indirectly reinforce judicious popular obstruction and opposition to their subversive agencies abroad; (*c*) because of this, it may serve to moderate the rate of Soviet genocidal advances which may be caused to become more secretive and hence more difficult to execute; (*d*) placed on the books of international law, it will stand as a formidable promise of human liberation and concrete redress; and, finally, (*e*) our true and candid adherence to its provisions will serve to enunciate the civilized principles for which we stand to fight and to which we aim to attract loyal minds in Ukraine and elsewhere in the Soviet prison and cemetery of nations.

It is because of these rationally founded reasons that we urge (1) that this committee report favorably and unanimously on the matter of the ratification of the Genocide Convention by the United States Senate and (2) that the United States Senate accept to ratify this Genocide Convention at the earliest date. To remit this convention to the United Nations would, in effect, sound its death knell. Let's not destroy this magnificent opportunity. We have sold states down the river, the Yalta ones and China, let's not sell nations, their bodies and souls, also!

Senator McMAHON. Thank you very much.

Mr. Delaney.

STATEMENT OF GEORGE P. DELANEY, REPRESENTING THE AMERICAN FEDERATION OF LABOR

Mr. DELANEY. The executive council of the American Federation of Labor at its recent meeting gave mature consideration to the tragic developments in nations behind the iron curtain, and appealed to the United States Senate to promptly ratify the proposed United Nations Genocide Convention.

In the statement adopted by the executive council the previous attacks which had been made on genocide were extended to cover additional areas not included in other pronouncements. The executive council expressed the opinion that the campaign now being waged by the Soviet Union in iron curtain countries is aimed at the complete elimination of entire groups of their population. The council urged that it be borne in mind that in countries where a single political party had a monopoly of all power and where the Government dictatorship is the sole employer, the "cultural programs" against intellectuals and their followers—

> mean virtually the sentencing of these individual human beings to death—by enforcing conditions which make life impossible, by ostracizing them and depriving them of all means of livelihood.

The executive council stated further that it was in possession of terrifying confirmation of the fact that prompt international action to check the spread and stop the perpetration of this heinous crime is most urgent. Otherwise, humanity is likely to be confronted by still further manifestations and variants of genocide in various parts of the world. The executive council further condemned genocide as a

tragic extension and frightening innovation in the crime of mass destruction, a development which emphasizes its growing menace to humanity and the urgent need for taking effective action against it.

REASONS FOR FEDERATION SUPPORT

The American Federation of Labor therefore urges the early ratification of the Genocide Convention for the following reasons:

(1) Since the matter of the Genocide Convention was brought up in the United Nations, the American Federation of Labor has watched the development of this issue with deep concern and has supported it whenever such support was needed.

(2) The American Federation of Labor is basically opposed to any violence, both in national and international life. Violence of the kind described in the Genocide Convention, not only inflicts atrocious losses and inhuman sufferings on victim groups, but it depraves the personality of the offenders, degrades them morally, and renders them potential enemies of the entire human race. Those who turn today against one national, racial, or religious group, will turn tomorrow against another. The world must be made aware of the dangers coming from genocidal governments and powerful groups. This convention will help to make this type of awareness concrete and practical.

(3) Genocide is a crime directed against innocent men, women, and children. Whose guilt is it that he is born as a member of a certain group, whether religious, national, or racial? This increases the feeling of compassion and makes it imperative for us to increase and deepen our solidarity with the victims of this crime.

(4) We agree wholeheartedly with the statement in the preamble to the Genocide Convention that the crime of genocide inflicts great losses on humanity. Genocide throughout history brought about not only the destruction of millions of people but also the obliteration of their original cultures.

(5) Genocide is a prelude to war. Very often the population in a nation is trained in killing its own citizens in order to prepare them for bestiality to be used against citizens of the other countries.

(6) When genocide starts, it is directed first of all against the weaker parts of society. In some countries of the world where political rights depend on economic wealth, the labor groups are considered weak and defenseless and they are therefore in the first line of attack by the genocidists. In the cases of genocide in this century, labor leaders and labor people were either destroyed directly or became inmates of concentration and slave-labor camps.

(7) The master tyrants of this century and maybe of all modern times, Hitler and Stalin, have transformed the function of labor, which is a function of life and constructiveness, into an instrumentality of destruction and death. This depravation and degradation of the social function of labor is the gravest sin that the dictators have committed against modern civilization. History will never forgive them this sin which now, through the Genocide Convention, can become an international crime.

(8) Nations should moreover, fight the crime of genocide for reasons of their own security. There is a striking parallel between Ghengis Kahn, Hitler, and Stalin. Everyone of them has been de-

stroying nations, one after another; and everyone of them used the spoils of the victim nation to increase his war potential with a view to subjugating the rest of the world. We are now witnessing large-scale genocide operations behind the iron curtain, especially in the Baltic and in the Ukraine. The Lithuanians, Latvians, Esthonians, and Ukrainians were destroyed as nations and this was achieved, not only through actual killings but also through elaborate and very ignificant systems of biological destruction. This involves slow death in slave-labor camps; breaking up of families so that procreation is stopped; kidnapping children; destruction of the bodies and the minds. Biological genocide, as described in article 2, points C, D, and E, is the most significant and most useful part of the convention for qualifying Soviet genocide. Although Hitler was also an expert on biological genocide, his main "achievements" were in the field of scientific killing. The Russians have achieved great results in biological genocide which amounts to a gruesome combination of slow death and calculated prevention of life. Through their satellites they have also revived the ancient barbarity of kidnapping children. Twenty-eight thousand Greek children have been kidnapped from Greece by the Communist guerrillas within the the last 3 years. These kidnapped children were taken to Yugoslavia, Rumania, and Bulgaria to be brought up in Communist kindergartens.

(9) Soviet Russia has to a large extent liquidated its political opposition. She did this job thoroughly and ruthlessly in her 33-year regime. The old opposition parties are already dead in Russia. But Russia is afraid of the subjugated nations which may gravitate to the west and therefore these nations were destroyed. Russia is engaging now in a demographic unification of its new empire and for the sake of this empire, the national, religious, and ethnic groups which cannot be nationally and culturally integrated into this empire on the lower level of moral existence must go into oblivion. This is a pattern of Soviet genocide in our day.

(10) The threat of genocide is already hanging over China. We have heard that China must send 500,000 slaves to Russia. The same demand was made by Hitler to Laval and Petain. History repeats itself, not only in events but also in moral degradation. Russia will not allow the creation of a new Titoism in China and the way to prevent it is to commit genocide, if not on all the 400,000,000 Chinese, at least a selected and determining part of the Chinese Nation, such as political leaders, religious leaders, educators, tradesmen, labor leaders, all of whom provide the cohesive force in a nation.

(11) Every decent human being is instinctively opposed to homicide, primarily for moral reasons. In his opposition to homicide, he need not necessarily know all the technicalities of the criminal procedure providing for apprehension and punishment. So, also, we treat the crime of genocide.

CONVENTION A COMPROMISE

We believe that this convention is the most useful instrument possible when one considers that it is the result of the work of many governments, and that a vote securing a two-thirds majority had to be taken on every provision of this convention. We would like, however, to stress one important issue in which we believe we speak with

authority. It is not true that Russia is independent of public opinion of the world. Russia is spending hundreds of millions on propaganda in foreign countries. She wants to appear as a savior of the small nations and of the colonial peoples in Asia. She certainly would not like therefore to see herself exposed as a Cain of nations. There is great force in this convention for it is the legal condemnation of a phenomenon which has been treated until now as a political issue alone. Certainly, the world might be divided on the evaluation of a political matter; but after this convention is ratified by the required 20 nations, the civilized world will be unified in its condemnation of genocide as an international crime. Russia then cannot afford to push genocide too far when genocide becomes an international crime. She can afford to stay out as a political outsider but cannot afford to appear before the forum of the world as a common criminal.

Senator McMAHON. Thank you very much indeed, Mr. Delaney, for a very good statement.

Mr. Jurgela, how long is your statement?

Mr. JURGELA. I should say between 25 and 30 minutes.

Senator McMAHON. You cannot compress it a little bit?

Mr. JURGELA. I will try.

Senator McMAHON. I am going to leave here at 17 minutes of 1, even if that is in the middle of a sentence. However, you will get a chance to continue this afternoon if you want to.

Mr. JURGELA. If that should happen, I would prefer to continue in full.

Senator McMAHON. Go ahead.

STATEMENT OF CONSTANTINE R. JURGELA, LITHUANIAN AMERICAN INFORMATION CENTER, NEW YORK CITY

Mr. JURGELA. I am appearing at this hearing in support of the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, which is now pending before the United States Senate.

I speak for the Lithuanian American Council, a Nation-wide coalition of all major ideological, political, fraternal, labor, and social organizations representing the overwhelming majority of about 1,000,000 American citizens. Its headquarters are in Chicago.

Senator McMAHON. What is your official title?

Mr. JURGELA. I am director of the Lithuanian American Council, which is the press arm of the council.

SOURCES OF INFORMATION

Senator McMAHON. You have sources of information, and you get information out from Lithuania?

Mr. JURGELA. Correct.

Senator McMAHON. And you get some in occasionally?

Mr. JURGELA. It is exceptionally difficult, except by air, and very difficult attempts to enter, which cost lives as a rule.

There are more than 40 newspapers and magazines published in this country in the Lithuanian language, or in Lithuanian and English, or English alone, which are financed and supported by Lithuanian Americans, and it is significant that during the past 4 years, when the

genocide treaty discussions first began, all of these publications supported the ratification of the Genocide Convention editorially or otherwise.

LITHUANIA AS A NATION BEING EXTERMINATED

Today, Lithuania as a nation is being exterminated.

Centuries ago, the race whose remnants are today identified with the Lithuanians and Latvians alone had occupied large areas of central-eastern Europe. This race had numbered several dialects and branches including the Prussians, Getvingians, and Galindians. The Prussians and Getvingians were mostly exterminated and the rest were either Germanized or Polonized with the exception of the hardy souls who had moved into Lithuania proper. The Galindians of the Smolensk area were subjugated and Russianized. Only linguists occasionally recall that the place names of Prussia, northern Poland, and of the Oka Basin are of Baltic or Lithuanian origin.

GERMANIZATION

Within the past century, Germanization of Prussian Lithuanians was vastly stepped up in several forms of cultural genocide, and the Ruthenization and Polonization of the Lithuanians of Vilnius (Vilna), Gardinas (Grodno), and Suwalki districts gradually narrowed the Lithuanian language area. Today, the indigenous Lithuanian population was for the most part forcibly removed from East Prussia and the Baltic seacoast by the Russians, and from the Suwalki area by Soviet Poland. This leaves but an island of Lithuanian language area—cut off from the sea and from Poland, cut off from all contact with the West and western culture which was the heritage of the Lithuanian people.

CZARIST GENOCIDE

Czarist Russia employed physical extermination by summary courts martial in peacetime, razing villages and mass exile of the population to Siberia, the prohibition of all printing in the Lithuanian language for 40 years, 1864–1904, the elimination of the language from all public life, persecution of the Roman Catholic Church, the barring of any employment to native intellectuals inside their country while offering them a career anywhere else in Russia, the imposition of a 25-year military duty, and a systematic pressure to deprive the people of their national traditions. This Russian oppression was responsible for the mass emigration from Lithuania since the suppression of the Lithuanian Insurrection of 1863 and 1964.

PRESENT U. S. S. R. GENOCIDE

The present Soviet Russian Government is continuing the genocidal policies of the tyrants of the past, except that the methods of genocide were perfected.

On June 30, 1940, Soviet Foreign Commissar Molotov talked in Moscow to Prof. Vincas Kreve-Mickevicius, who was at the time Minister of Foreign Affairs and Acting Prime Minister of Lithuania, and who is now a professor at the University of Pennsylvania. Molotov stated:

SOVIET TERRITORIAL AMBITIONS

The Russian Czars, beginning with Ivan the Terrible, were trying to reach the Baltic Sea, not because of their personal ambitions, but because this was required for the development of the Russian State and the Russian nation. It would be unpardonable if the Soviet Union did not seize this opportunity which may never recur. The leaders of the Soviet Union have decided to incorporate the Baltic States into the family of the Soviet Republics.

Pravda, the official mouthpiece of the Communist-Bolshevik Party, frankly admitted in the spring of 1941 that—

Peter the Great had made a grave mistake in leaving the inhabitants of the Baltic area in their countries.

The present Soviet rulers are correcting this mistake—by attempting to efface the Baltic peoples. The Lithuanians, the bearers of long historical traditions of statehood and national culture, are singled out for destruction, especially because they are not receptive to Bolshevik ideas.

LITHUANIAN POPULATION IN 1940

When the Russians occupied Lithuania in 1940 the total membership of the Communist Party of Lithuania, in a population of 3,000,000 was roughly 1,500, of whom less than 700 were of Lithuanian nationality.

This circumstance explains the continuing interest of the descendants of the first Lithuanian immigrants in this country in the unceasing tragedy of their relatives in Lithuania. This explains our unanimous support of the Genocide Convention.

The political events of the past decade are public knowledge. In 1939, Russia and Germany signed two pacts dividing Poland and the Baltic States between these two partners in aggression. The Ribbentrop-Molotov deal regarding Poland was more or less sanctioned by the western allies at Yalta, but the United States faithfully adheres to its policy of nonrecognition of the fruits of the Russo-German partnership in aggression in the Baltic States.

The Nazi record of genocide during the late war likewise received adequate publicity, especially in connection with the Nuremberg trial of the major Nazi war criminals.

SOVIETS ENGAGED IN GENOCIDE BEFORE THE NAZIS

What is not realized generally, however, is the fact that the Soviet partners of the Nazi war criminals were engaged in genocide long before the Nazis, long before the establishment of concentration camps and slave labor in Germany, and on a scale by far surpassing the Nazi experiment. It is true that there were reports of forced-labor camps in Russia. There were reports of the methods of planned starvation and mass deportation employed in bringing the Ukraine to her knees. During and immediately after the war, there were reports of the swift destruction of the Volga German Autonomous Republic and several other autonomous republics, and the rapid dispersion of millions of people from these areas, including the inevitable separation of children from their parents, wives from their husbands.

THE FINNISH ABSORPTION OF KARELIAN POPULATION

The following significant example escapes American attention:

When Finland was forced to cede Karelia to Russia in 1940, all of the 400,000 Karelians left their homes and moved into Finland. Given the choice of staying under the Soviet regime or going to Finland, all of the Karelians—with the exception of 17 persons—moved to Finland for the second time in 1945. The Finnish Government saved these people from genocide by accepting them into other parts of the country.

Hundreds of thousands of Lithuanians, too, attempted to leave Lithuania before the advancing Russians in 1944 but the German troops permitted just a few of these to proceed, and Russian troops cut off more than 90,000 Lithuanians near Danzig. Nothing has been heard of these people since.

LARGE-SCALE GENOCIDE OPERATIONS IN LITHUANIA

The perpetration of large-scale genocide operations with unprecedented precision and speed, to quote the Soviet order, "without noise or panic," with the employment of vast bodies of police forces, railway and motor transports, would have been impossible in the absence of elaborate plans. And the Russians had such plans, and have additional plans for other prospective victim nations. The Russian plan was demonstrated in eastern Poland in 1940 and in the Baltic States in 1941.

The difference between Hitler's and Stalin's methods of genocide is that the Nazi killed undesirable people outright, while Stalin tortures his victims with slow death and destruction, which is less conspicuous but extremely dangerous. The Bolsheviks classify their victims into several classes. Some are tortured and killed outright, others are sent to forced labor camps for slow death by starvation and exhaustion. The rest are slated for remolding for transformation into a Soviet man, a mass of obedient instruments of the government, people without individuality, without religion, without national culture.

The Soviet Union is ruled by a single political group, called the Communist Party, which constitutes a supergovernment. Soviet decrees usually note decisions by "the Central Committee of the Communist-Bolshevik Party and by the government." The reason for this distinction is clear. Lenin himself told the Soviet when he urged the signing of the Brest-Litovsk Treaty in 1918:

> **The Central Executive signs the peace, the Council of Commissars signs the peace, but not the Central Committee of the party. This Soviet Government is not responsible for the behavior of the latter.**

The administration of Russia is controlled by the Communist Party. The party is controlled by its central committee, and the latter in turn is dominated by the Politburo. The ministers and officials are puppets. The Politburo never signs treaties.

The Kremlin Politburo has its planning bureaus for most of the foreign states, and plans of destruction are ready for the immediate neighbors of Russia. The Politburo is the brain that controls the executive arms which carry out its decisions: the MVD and MGB—the Ministry of the Interior and the Ministry of State Security—with their independent armed forces, including tanks, artillery, and planes.

PLANS FOR ANNIHILATION OF BALTIC POPULATION

A Baltic sector had been formed, by order of the Politburo, in the Planning Division of the NKVD, the forerunner of the MVD and MGB, in 1938. Plans for the annihilation of the Baltic peoples were elaborated by Comrade V. G. Dekanozov of the NKVD. The Politburo was satisfied with his work, and elevated Dekanozov to the status of a Deputy People's Commissar for Foreign Affairs, the post he occupied during the Hitler-Stalin negotiations. This post is comparable to that of our Under Secretary of State.

DEKANOZOV'S BLUEPRINT

When Hitler invaded the lowlands and France, the Pilitburo put Dekanozov's blueprint into operation.

Ultimatums were served on the Baltic States. Russian armies and NKVD troops flooded those countries. Dekanozov was dispatched to liquidate Lithuania, "the base of the Baltic pyramid." His fellow Deputy People's Commissar for Foreign Affairs, Andrei Vyshinsky, was dispatched to supervise the burial of Latvia. General Zhdanov, member of the Politburo, was sent to dispose of Estonia. The activities of these three special envoys of the Politburo were carefully synchronized to the last detail into a single pattern—the date of "elections," simultaneous proclamation of identical decrees, first arrests, and so on. Each native "minister" received a Russian "deputy" who "simplified the work" of the alleged minister. Dekanozov accomplished his task so well that he received a new assignment to the seat of Russia's Nazi partner: he was Soviet ambassador to Berlin during the rest of the period of Soviet-Nazi friendship.

EVIDENCE OF THE PREARRANGEMENT OF THE PLAN

There is direct evidence of the Russian prearrangement of the plans of genocide. For instance:

(1) The Red Army General Staff prepared a map marked "First edition, 1939." A full year before the annexation of the Baltic States, this map of 1939 bore a significant title: "Lithuanian SSR, Latvian SSR and BSSR," the latter meaning "Byelorussian SSR."

(2) Guzevicius, the nominal head of the NKVD for Lithuania, by an order No. 0054 of November 28, 1940, directed the listing of all "people's enemies," including all non-Communists and aliens. He prefaced his order with—

> Executing the order No. 001223 of the NKVD of the U. S. S. R. regarding accounting for anti-Soviet element * * *

NEW DEPARTMENT OF NKGB—HOW ITS FILES WERE OBTAINED

In February 1941, a new department of the NKGB—the People's Commissariat of State Security—was formed by dividing the NKVD into two parts, and Senior State Security Major Gladkov, the former "deputy" bossing Guzevicius, came into his own as a full fledged Commissar of State Security. We are indebted to him for the knowledge of the date of Russian preparations for genocide in the Baltic

States: Here is the original top secret order. It was reproduced in facsimile in the October 1946 issue of the Lithuanian Bulletin, together with an English translation. This is one of a number of top secret NKVD files seized by the Lithuanian insurrectionists in 1941.

In two places comrade Gladkov fixed the date of the basic directive for Guzevicius and his counterparts in Latvia and Estonia. On page 1, paragraph 3 states:

Existence of a large contingent of persons, subject to operative accounting under Order No. 001223 of the NKVD of the U. S. S. R., dated October 11, 1939, regardless of concrete data concerning their anti-Soviet activities * * *

He repeats on page 2, the last line of item 4 of the order:

(See Order No. 001223 of the NKVD of the U. S. S. R. of October 11, 1939.)

The date is significant for all statesmen negotiating any treaties with the Soviet Union: the initial order putting the Dekanozov blueprint for the "liquidation" of the Baltic peoples into execution, was dated exactly the day following the signing of the Treaty of Friendship and Mutual Assistance between the Soviet Union and Lithuania, and within a week following the signing of similar pacts with Estonia and Latvia.

Senator McMahon. We will have to adjourn now. We will recess until 2:30.

(Whereupon, at 12:43 p. m., a recess was taken until 2:30 p. m of the same day.)

AFTERNOON SESSION

Senator McMahon. You may continue, Mr. Jurgela.

SOVIET TOP SECRET DOCUMENTS

Mr. Jurgela. A set of top-secret Russian NKVD and NKGB documents, including some on the stationery of the Moscow headquarters of these nefarious institutions, was brought out by the Lithuanian Underground Resistance Movement. These documents are now in the United States for custody. They were microfilmed and photostated several years ago for the use of government agencies and researchers, to reveal the inner operations of the NKGB–NKVD forces which maintain the Communist Party in power and extend Russian control over non-Russian areas and countries.

These top-secret orders, marked on the reverse side "I have read" and signed by the operators executing the orders, disclose revolting features of a systematic preparation for genocide operations. They portray the painstaking paper work of accounting, behind which lie thankless efforts of hundreds of officials sifting the state and private archives of Lithuania, Latvia, and Estonia, and the correlation of information gathered by a vast network of secret agent-informers.

Accounts prepared by local bureaus of the NKVD and NKGB were carefully sifted and classified in the main offices in Lithuania, Latvia, and Estonia and, in turn, reported to Moscow. Railway facilities and motor transport were massed in Russia for the genocidal invasion of the Baltic States. Additional NKVD troops arrived, under orders not to show themselves on streets in these occupied countries.

TIMETABLE OPERATIONS

The timetable of operations was upset by the unexpected resistance of Lithuanian farmers to the seizure of their grain stocks and by armed groups of young men driven to desperation by the Russian oppression. Gladkov informed Moscow and instructed his subordinates to infiltrate NKGB agents into the ranks of the insurrectionists.

Two strictly secret orders, written on Moscow stationery and containing handwritten resolutions of several top officials of the NKGB in Lithuania were reproduced in the September-October 1947, issue of the Lithuanian Bulletin. The order, dated May 31, 1941, instructed the Russian NKGB in Lithuania to prepare for exiling into remote places of the Union of the S. S. R. of the anti-Soviet minded persons who conduct active counter-revolutionary agitation.

Here is the notorious Serov order. The copy I am showing you is stamped "Received in the county branch of the NKGB for the county of Siauliai as No. 24 of the incoming mails of June 7, 1941." It was elaborated much earlier, because the readying task was distributed among various NKGB officials by an order No. 0037 of May 23, 1941, which referred to order No. 77 of Commissar Merkulov, dated May 19, 1941. In fact, Gladkov's order No. 1/1148 of June 4, 1941, was received at Siauliai the same day, June 7, and entered as incoming No. 23—that is, one number ahead of the Serov order, and in that order, Gladkov refers to his earlier order No. 0037 and elaborates on the Serov instructions. In an order No. 1/1160 of June 6, 1941, Gladkov repeats verbatim the Serov order provisions and refers to supplementing the earlier instruction regarding the manner of effecting the operation known to you. This order was reproduced in the spring 1946 issue of the Lithuanian Bulletin, page 24, and I should like to offer it for the record.

Senator McMAHON. The orders you submit will be placed in the record.

(The matter referred to is as follows:)

[From the Lithuanian Bulletin, Spring 1946, p. 24]

FACTS AND DOCUMENTS OF THE FIRST RUSSIAN OCCUPATION OF LITHUANIA (1940–1941)

Order No. 0054 of the People's Commisar for the Interior of the Lithuanian SSR, dated 28th November 1940 and reproduced in "*An Appeal To Fellow Americans on Behalf of the Baltic States by United Organizations of Americans of Lithuanian, Latvian, and Estonian Descent*" (Lithuanian-American Information Center, New York, August 1944, pp. 19–21), contained the following phrase:

"*Executing the order No. 001223 of NKVD of the USSR* about the accounting concerning the anti-soviet element and concerning the liquidation of negligence in this work * * *"

As may be observed, the date of the aforesaid Order No. 001223 was omitted in the Lithuanian document. That order paved the way for the mass arrests and deportations which were initiated on "The Bartholomew Night of the Baltic States," the night of 13–14 June 1941, and which precipitated the mass insurrection of the Lithuanians.

Two documents, reproduced below, throw additional light on the subject and explain the reticence of the NKVD of Lithuania.

The first document is a Map of "*The General Staff of the RKKA Scale 5 kilometers in 1 centimeter Vilno*" ("RKKA" stands for "Workers Peasants Red Army"). Its left-hand top corner, superimposed on the top center in our reproduction, very significantly reads: "*Lithuanian SSR, LATV. SSR and BSSR*" (the

"BSSR" stands for the White Ruthenian or Byelorussian SSR). Below this, the map reads: "*First Edition* 1939."

The second document refers, in two places, to the date of the Order No. 001223 of the NKVD of the USSR: 11*th October* 1939. In other words, Moscow Headquarters of the NKVD had issued its first order directing the preparations for mass liquidation of "the anti-Soviet and anti-social elements" of Estonia, Latvia and Lithuania *on the next day following the signing of the Non-Aggression and Mutual Assistance Pact with Lithuania*: that Pact was signed on 10th October 1939.

Both of these documents help explain the true Russian policy objectives during the 1939 negotiations with Great Britain and France and the parallel parleys with Nazi Germany, which culminated in the two Ribbentrop-Molotov Pacts of August and September 1939.

Additional documents from the "Strictly Secret" files of the NKVD and NKGB (presently renamed MVD and MGB—the Ministry of Internal Affairs and Ministry of State Security) will be published on these pages in the forthcoming issues of the *Lithuanian Bulletin*.

APPENDIX A

[From the Lithuanian Bulletin]

English Translation
Strictly Secret.

ORDER

OF THE PEOPLE'S COMMISSAR OF STATE SECURITY OF THE LSSR FOR YEAR 1941

Contents:

No. 0023 of 25 April 1941. City of Kaunas.

A fighting task has been placed upon the NKGB organs of Lithuania by the party and government—the purging of the Lithuanian SSR from the counter-revolutionary and hostile element.

We shall be able to effect this important political objective successfully and speedily only if the operative accounting is well arranged.

Practical experience of the work of the NKGB of the LSSR shows that the most important and, in the past, most active collaborators of the bourgeois organs of the government army and intelligence institutions, also of the former counter-revolutionary political parties and organizations, frequently do not fall within the field of observation of the NKGB organs and are not fully screened.

Existence of a large contingent of persons, subject to operative accounting under Order No. 001223 of the NKVD of the USSR, dated 11 October 1939, *regardless of* concrete data concerning their anti-Soviet activities, obligates the NKGB of the LSSR at the present time, because of the activization of the counter-revolutionary element on the territory of the LSSR, *to specify separately* in its accounting work and screening of the counter-revolutionary and hostile elements, the categories of particularly dangerous persons, *whose accounting must be organized in first priority order and within the shortest time possible.*

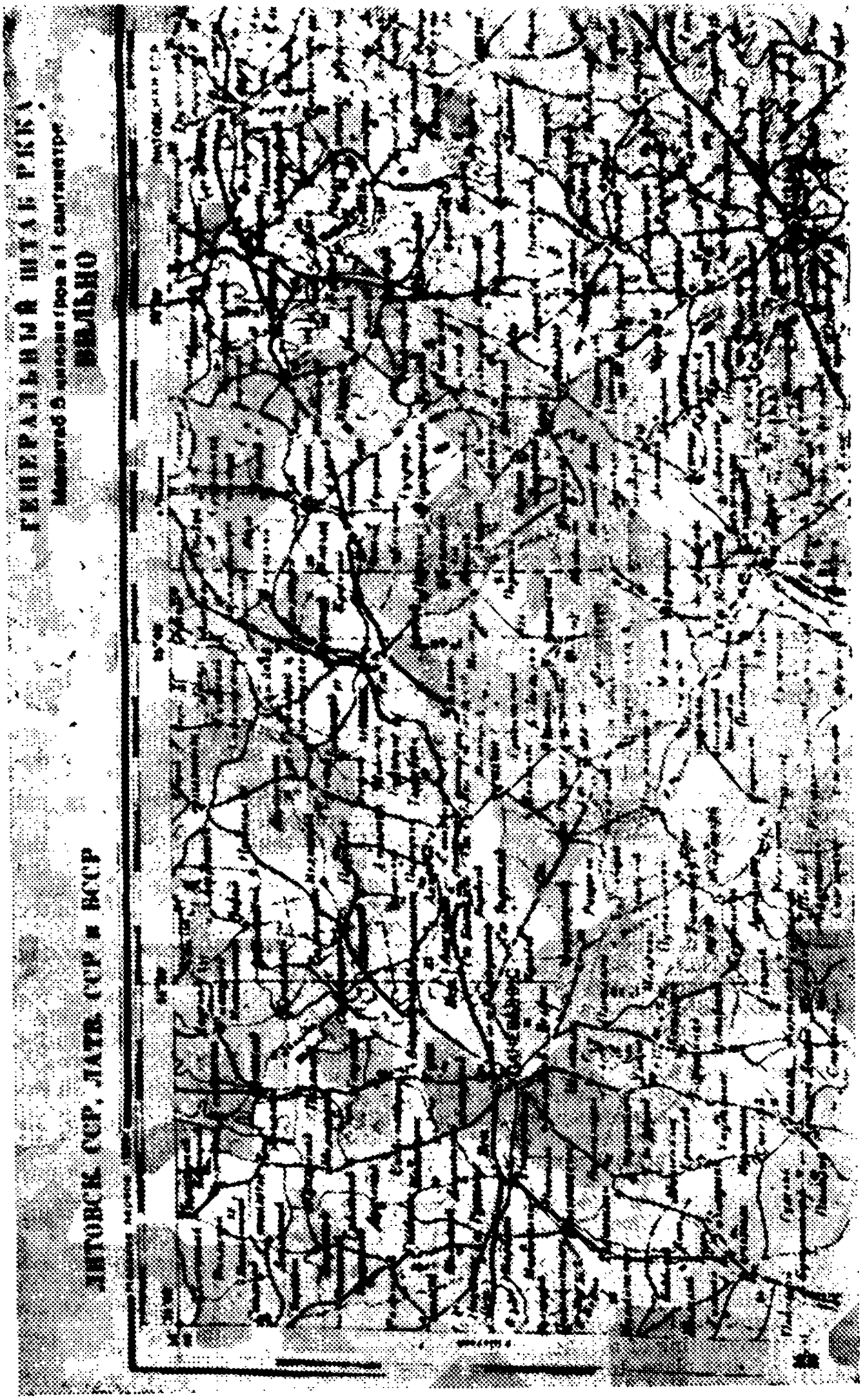
In view thereof, the county branches and subdivisions of the NKGB must immediately organize the accounting of all the accountable element, in conformance with the instructions given you during the briefing consultation and in our directives.

Noting the quite unsatisfactory performance of the accounting up to the present, we consider the continuation of such a situation intolerable in any event.

I THEREFORE ORDER

1. Individually all Commanders of the county branches and subdivisions and their deputies to organize immediately the work of performance of the proper operative accounting of all the accountable element.

2. In the first place, to expose, take under account and furnish to the NKGB of the LSSR detailed data concerning the accountable element, in conformance with the listing of the accountable element enclosed herewith.



3. By 5 May 1941, to supply the NKGB of the Lithuanian SSR with the data regarding the number of persons already taken into account by you according to the listing of the categories enclosed herewith.

4. To organize immediately the factual re-checking of the accounted-for contingent by places of residence, and to start a file-formular or an accounting folder for each, and to register same with the 2nd Division of the NKGB of the LSSR /See: Order No. 001223 of the NKVD of the USSR of 11 October 1939/.

5. To start the scrutiny of the archives, also the exposal of the persons of the aforesaid categories through the existing agency (network), and simultaneously to verify their location as to place of residence, so that they be taken into operative accounting immediately.

6. Tracing files must be opened for all persons of this category, whose whereabouts could not be ascertained at their former place of residence, in conformance with Order No. 001530 of the NKVD of the USSR of 9 December 1940, and to direct these files for publication of persons wanted in the Lithuanian SSR—to the 2nd Division of the NKGB of the LSSR.

7. Every 5 days (the 5th, 10th, 15th, etc.) to submit to the 2nd Division of the NKGB of the LSSR a summary of the results of the work in compliance with this order as per enclosed form.*

8. I reiterate that, alongside the work of accounting and tracing of the contingents enumerated hereinabove, the apparatus of the NKGB must conduct the exposal and organize the accounting and screening of the residual contingents subject to accounting who are not listed in the aforesaid summary, namely: members of the parties—Krikdems (Christian Democrats), Lyaudininki (Populists), Esdeks (Social Democrats), Essers (Social Revolutionaries), leadership personnel and active members of the Ateitininki (Catholic Youths) and other Catholic organizations, also the rank and file personnel of the parties and organizations whose leadership is subject to primary priority accounting according to the present order—/rank and file Tautininki (Nationalists), Shaulisty (National Guardsmen), etc./.

NOTE: Detailed listing of the categories subject to accounting will be additionally forwarded within the next few days.

In the event of omission of certain categories in the prepared lists,—supplement same and inform us.

9. All work of accounting of the persons of the listed categories must be completed and formulated by 1 June 1941.

Once again I forwarn the Commanders of the county branches of the NKGB and their deputies *that the success and achievement of the objective of our measures for the crushing of the counter-revolution depend on the timely, precise and instant organization of the operative accounting.*

10. For the task of organization and direction of the accounting work, an operative group is created hereby within the 2nd Division of the NKGB, composed of:

1. Deputy Commander of the 2nd Division, Lieutenant of the State Security Forces—comrade Medvedev.
2. Operative Plenipotentiary of KRO (Counter-Intelligence Division)—comrade Yerigo.
3. Operative Plenipotentiary of SPO (Social Political Division)—comrade Gadlyauskas.

—who are to be relieved of all other work.

SUPPLEMENT: listing and accounting forms.

People's Commissar of State Security of the Lithuanian SSR
Senior Major of the State Security Forces—

(signed) GLADKOV

Authentic—
Codifier of the Secretariat:
(Signed) SEMYOKHINA

*See Lithuanian Bulletin, vol. III, No. 5.

[Jurgela's testimony, p. 6, 2nd paragraph from bottom: *Order No. 0037*]

[Published nowhere up to now]

Translation from Russian
Strictly Secret.

2

ORDER

OF THE PEOPLE'S COMMISSAR OF STATE SECURITY OF THE LSSR FOR YEAR 1941

Contents:

No. 0037. On preparation for the operation.
No. 0037. Of May 23rd, 1941. City of Kaunas.

In executing the directive of the People's Commissar of State Security of the Union of the SSRs, State Security Commissar of 3rd Rank—comrade Merkulov, of May 19, 1947, No. 77—

I ORDER:

I. For the direction, preparation and execution of the operation of purging the Lithuanian SSR from the hostile anti-Soviet and criminal and socially-dangerous element, to create at the NKGB of the Lithuanian SSR an Operational Staff made up of:

1. Deputy Narkom of State Security of the LSSR, Major of State Security—comrade Bykov [to lead].
2. Deputy Chief of SPO [Secret Political Department] of the NKGB of the LSSR, Lieutenant of State Security—comrade Kholevo.
3. Deputy Chief of Intelligence Department [RO] of the NKGB of the LSSR, Captain of State Security—comrade Bakulin.
4. Deputy Chief of Department 2, Lieutenant of State Security—comrade Medvedev.
5. Deputy Section Chief of KRO [Counter-Intelligence Department], Sergeant of State Security—comrade Popov.
6. Section Chief of SPO of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Gerasimovich.
7. Deputy Section Chief of Department 3—comrade Ivanov.

II. To coordinate the problem of preparation for the operation along the NKVD line and of the preparation itself, to request the Narkomvnudyel [People's Commissar of the Interior]—comrade Guzevicius to delegate the following comrades into the personnel of the Directing Staff on the part of the NKVD:

1. Department Chief of the URKM [Administration of Worker Peasant Militia], Senior Lieutenant of Militia—comrade Guzevev.
2. Commander of the Operational Regiment of the NKVD troops, Colonel—comrade Nikolin, and in the latter's absence—Chief of Staff, Major—comrade Antonov.

All of the indicated comrade collaborators of the NKGB are to be relieved of all other duties until the conclusion of the operation.

III. For effecting the preparatory work on the spot regarding direction, accounting, formularization of cases, and for effecting the operation itself, Operational Trios with the participation of the NKVD operators are hereby ordered to be formed in county branches and precincts, at the Vilnius City Board and at the railroad precincts of the NKGB, of the following membership:

1. *Alytus county.*

a/ Deputy Chief of the County Branch of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Yudin.
b/ Senior Operational Plenipotentiary of the Secretariat of the NKGB of the LSSR, Lieutenant of State Security—comrade Karyagin.
v/ Chief of the NKVD County Branch—comrade Burovenkov.

2. *Birižai county.*

a/ Deputy Chief of the County Branch of the NKGB of the LSSR, Lieutenant of State Security—comrade Guskov.
b/ Senior Operational Plenipotentiary of SPO of the NKGB of the LSSR—comrade Mirsky.
v/ Deputy Chief of the UO [County Branch] of the Militia, Lieutenant of Militia—comrade Skvortzov.

3. *Vilkaviškis county.*

a/ Deputy Chief of the U/O of the NKGB, Lieutenant of State Security—comrade Shurepov.
b/ Senior Plenipotentiary of SPO of the NKGB of the LSSR, Lieutenant of State Security—comrade Plotkin.
v/ Chief of the UO of the NKVD—comrade Bartkevičius.

4. *Zarasai county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Sergeant of State Security—comrade Kosolapov.
b/ Section Chief of Department 2 of the NKGB, Sergeant of State Security—comrade Likhvintzev.
v/ Chief of U/O of the NKVD—comrade Gužauskas.

5. *Kedainiai county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Sergeant of State Security—comrade Mochalov.
b/ Deputy Section Chief of SPO of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Ovseyenko.
v/ Chief of the U/O of the NKVD of the LSSR, Lieutenant of Militia—comrade Kovalyov.

6. *Kretinga county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Petrushenko.
b/ Section Chief of KRO of the NKGB of the LSSR, Lieutenant of State Security—comrade Dunkov.
v/ Deputy Chief of the U/O of the NKVD, Junior Lieutenant of Militia—comrade Beryozin.

7. *Kaunas county.*

a/ Chief of the U/O of the NKGB of the LSSR, Sergeant of State Security—comrade Shustaryov.
b/ Senior Operational Plenipotentiary of the U/O of the NKGB of the LSSR, Sergeant of State Security—comrade Serdun.
v/ Deputy Chief of the U/O of the NKVD of the LSSR, Senior Lieutenant of State Security—comrade Korolenko.

8. *Marijampole county.*

a/ Chief of the U/O of the NKGB of the LSSR—comrade Petrikas.
b/ Deputy Section Chief of KRO of the NKGB of the LSSR, Sergeant of State Security—comrade Bogodukh.
v/ Deputy Chief of Militia, Lieutenant of Militia—comrade Styepin.

9. *Mazeikiai county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Mukhin.
b/ Senior Investigator of the Inquest Part of the NKGB of the LSSR, Sergeant of State Security—comrade Kreemov.
v/ Chief of the U/O of the NKVD of the LSSR—comrade Balsis.

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10. *Panevežys county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Sergeant of State Security—comrade Novikov.
b/ Lieutenant of State Security of the NKGB of the LSSR—comrade Dobrotvorsky.
v/ Chief of the U/O of the NKVD of the LSSR—comrade Morkovkin.

11. *Rokiškis county*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Sergeant of State Security—comrade Zaitzev.
b/ Senior Operational Plenipotentiary of KRO of the NKGB of the LSSR, Lieutenant of State Security—comrade Rodionov.
v/ Chief of the U/O of the NKVD of the LSSR—comrade Romanauskas.

12. *Raseiniai county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Sergeant of State Security—comrade Klemin.
b/ Senior Investigator of the Inquest Part of the Vilnius City Board of the NKGB of the LSSR, Lieutenant of State Security—comrade Sidorenko.
v/Deputy Chief of the U/O of the NKVD of the LSSR—comrade Janulevičius.

13. *Lazdijai county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Sergeant of State Security—comrade Miroshnichenko.
b/ Senior Operational Plenipoteniary of KRO of the NKGB of the LSSR, Lieutenant of State Security—comrade Stepanyan.
v/ Chief of the U/O of the NKVD of the LSSR—comrade Zavadskas.

14. *Telšiai county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Morozov.
b/ Deputy Chief of the Cadres Department of the NKGB of the LSSR, Senior Lieutenant of State Security—comrade Babsky.
v/ Chief of the U/O of the NKVD—comrade Taurinskas.

15. *Trakai county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Sergeant of State Security—comrade Grishachyov.
b/ Deputy Chief of AKhO [Administrative Supply Department] of the Vilnius City Board of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Vylkavitzky.
v/ Chief of the U/O of the NKVD of the LSSR—comrade Shtendelis.

16. *Taurage county.*

a/ Chief of the U/O of the NKGB of the LSSR—comrade Martavičius.
b/ Senior Operational Plenipotentiary of RO [Intelligence Department] of the NKGB of the LSSR, Lieutenant of State Security—comrade Yermakov.
v/ Chief of the U/O of the NKVD of the LSSR—Comrade Liepa.

17. *Utena county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Kuzmin.
b/ Senior Operational Plenipotentiary of KRO of the Vilnius City Board of the NKGB of the LSSR, Sergeant of State Security—comrade Metyolkin.
v/ Deputy Chief of the U/O of the NKVD of the LSSR—comrade Malofeyev.

18. *Ukmerge county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Lieutenant of State Security—comrade Karpachev.
b/ Deputy Chief of the Vilnius City Board of the NKGB of the LSSR, Senior Lieutenant of State Security—comrade Anokhin.
v/ Chief of the U/O of the NKVD of the LSSR—comrade Lisas.

19. *Šiauliai county.*

a/ Chief of the U/O of the NKGB of the LSSR—comrade Macevičius.
b/ Deuty Chief of Inquest Part of the NKGB of the LSSR, Senior Lieutenant of State Security—comrade Vilensky.
v/ Chief of the U/O of the NKGB [NKVD] of the LSSR—comrade Vitsas.

20. *Šakiai county.*

a/ Deputy Chief of the U/O of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Balamutenko.
b/ Senior Operational Plenipotentiary of SPO of the Vilnius City Board of the NKGB of the LSSR, Lieutenant of State Security—comrade Surmach.
v/ Chief of the U/O of the NKVD of the LSSR—comrade Biščiulis.

21. *Švenčionys county.*

a/ Chief of the U/O of the NKGB of the LSSR, Lieutenant of State Security—comrade Vasilyev.
b/ Chief of Department 5 of the NKGB of the LSSR, Junior Lieutenant of State Security—comrade Mikhailov.
v/ Chief of the U/O of the NKVD of the LSSR—comrade Blinovas.

IV. An Operational Staff is to be formed at the Vilnius City Board of the NKGB of the LSSR, of the following personnel:

1. Chief of the UNKGB [Ppravleniye—Board of the People's Commissariat of State Security] of the LSSR, Major of State Security—comrade Sharok.
2. Deputy Chief of SPO, Junior Lieutenant of State Security—comrade Byelov.
3. Deputy Chief of KRO, Lieutenant of State Security—comrade Bogatov.
4. Chief of Section 2 of the UNKGB of the LSSR, Lieutenant of State Security—comrade Kharchenko.
5. Chief of the UNKVD [Upravleniye—Board of the People's Commissariat of the Interior] of the LSSR—comrade Vildžiunas.

V. In conformance with the directive No. 77 of May 19, 1941, by the Narkom [People's Commissar] of the Union, files must formularized regarding every accounted-for person slated for elimination. The following documents must be filed in each such folder [in the absence of the indicated papers—insert depositions of witnesses, or statements of citizens corroborated by testimony of witnesses]:

a/ data of the agentura [network of agent-informers];
b/ archivarian data;
v/ full identifing data regarding head of the family [the questionnaire];
g/ identifying data regarding members of the family [the questionnaire];
d/ abstract according to agentura and official data, and abstract according to archive data;
e/ itemized abstract regarding property status.

VI. Operational Trios must account to the Staff every day regarding the number of persons who are subject to elimination, detected and taken into accounting within the past 24 hours, by dispatching to the NKGB a special memo with enclosed summaries in duplicate.

VII. Operational Trios are hereby ordered to be formed at the ODTOs [Branches of the Road Transport Department] of the NKGB of the LSSR, of the following personnel:

1. *Kaunas.*

1. Chief of the ODTO, Senior Lieutenant of State Security—comrade Savchenko.
2. Senior Operational Plenipotentiary, Junior Lieutenant of State Security—comrade Gaponenko.
3. Chief of the Railway Militia precinct—comrade Dubov.

2. *Vilnius.*

1. Chief of the ODTO, Lieutenant of State Security—comrade Ivanov.
2. Senior Operational Plenipotentiary, Junior Lieutenant of State Security—comrade Pugach.
3. Chief of the Railway Militia precinct—comrade Mazurov.

3. *Siauliai.*

1. Chief of the ODTO, Junior Lieutenant of State Security—comrade Mikhlik.
2. Senior Operational Plenipotentiary—comrade Shillov.
3. Chief of the Railway Militia precinct—comrade Mozgovoy.

VIII. The necessary numbers of operational personnel are to be assigned to the Operational Staff and Trios.

Deputy People's Commissar of State Security of the LSSR, Major of State Security—comrade Bykov, with the participation of the NKVD, is to prepare an operational plan for the carrying out of the operation, subject to my approval.*

Deeming this task to be of exceptional importance, I order the Chiefs of operational Departments of the NKGB, Chiefs of county Branches and Precincts—to mobilize the entire operational personnel of the county branches and precincts for a successful execution of this objective within a minimum time.

The Narkomvnudyel [People's Commissar of the Interior]—comrade Guzevičius, is requested to direct local organs of the militia that they extend collaboration with the organs of the NKGB in carrying out the operation [identification, etc.].

[Written in by hand:] After acquainting yourself with these contents, immediately return the same back.

Do not apprise the operational personnel of the contents of the order.

People's Commissar of State Security of the LSSR
Senior Major of State Security—

[GLADKOV]

Authenticated—
Assistant Operational Plenipotentitary of the Secretariat for codification—
SEMYOKHINA [Semyokhina]

[On the reverse side of page 7—handwritten:]
I have read: [Two illegible signatures]
29/V- 41.
I have read 26/V–41. [One illegible signature]

[NOWHERE published as yet]

Strictly Secret.
[Penciled:] To POPOV KRO Translation

ENUMERATION

OF MEASURES WHICH MUST BE PREARRANGED BEFORE EXECUTION OF THE FORTHCOMING OPERATION

[For the Chief of the county Branch]

1. Diligently review all accounting cases and sift those cases which, under available incriminating data, are not subject to the operation.
2. Identify all persons taken into accounting according to their places of residence, utilizing as a pretext the forthcoming passportization, sanitary inspection of the quarters, telephone repairs, etc.

*The dark spots appearing on the facsimile of the Russian original are red ink spillings. The original is perfectly legible.

3. Study thoroughly the instruction regarding the conduct of the operation, which is confirmed by Deputy Narkom—comrade SEROV, and in accordance with this instruction the chief of the county Branch shall conduct the briefing of the operational personnel which will have arrived for his disposal.

4. After confirming the accounting cases, add up the total number of families and persons and estimate the figures for the necessary operational personnel; in doing this, detract the operational personnel available at the county Branch.

The quantity of the operational personnel is to be selected by the following method of estimating: 1 operational collaborator, 1 collaborator of the NKVD, one Red Army man of the NKVD troops and 1 representative of the local Soviet-Party organ. These 4 persons must carry out the operation regarding 2 families.

5. Prepared quarters for the arriving operational personnel, organize the feeding and warn the operational personnel that they should not go out anywhere into the city, lest the exilable contingent be forewarned.

6. Prepare paper and pencils for the participants of the operation. Prepare the reserve of combat weapons and combat munitions for the event that any of the operational collaborators should arrive unarmed.

7. Mark out in advance the persons among the local Party-Soviet aktiv who are expected to be drafted for the operation, but do not inform any one about the forthcoming operation.

8. On the map of your respective area, mark the number of persons who are subject to [slated for] the operation at the inhabited points. Formulate this in practice thus: Underneath the name of the inhabited point mark, within a circle, the number of families by numerator, the number of members of families by indicator; on the same map, trace the route of movement of the exiles toward the stations of loading. Furthermore, take care that the movement of a column by horse power should not exceed the distance of 25 kilometers.

It is most advisable to deliver the exiles to paved turnpike where they should be met by auto-transport and brought to the railroad station.

9. Draw up a plan of loading at the railroad station and indicate in your requisition requests the required number of railway cars, estimating not less than 25 persons per car.

On the eve of the operation, following the briefing, select the accounting files for distribution among the operational personnel. Bear in mind that both the personal files regarding the exiles and the personal files regarding the prisoners will be enclosed in a single folder until the very moment of their loading on the echelons; before loading them on board a car, personal files regarding family heads are surrendered to the echelon's commander, personal files regarding family members are surrendered to the commander of the other echelon. /See the Instruction, part 5./

Deputy People's Commissar of State Security of the Union of the SSR
Commissar of State Security of Third Rank—

[SEROV]

June 4th, 1941.

Attest—
Assistant Operational Plenipotentiary of the Secretariat for Codification—
SEMYOKHINA [Semyokhina.]

(e) ANOTHER KREMLIN ORDER TO THE EXECUTIONERS

UNION OF SOVIET SOCIALISTIC REPUBLICS
PEOPLE'S COMMISSARIAT OF STATE SECURITY

"___"____31/V (May) yr. 1941

No. 4/4/9174

Moscow, Dzerzhinsky Plaza, 2
Short summary:

ar *Strictly secret.*

[1] Liter. "_____"

Recvg. No. _____ to No. _____
of _____yr. 194

In reply refer to No., numeral and Division

[2]

To NARKOM (People's Commissar) OF STATE SECURITY OF THE LITHUANIAN SSR
SENIOR MAJOR OF STATE SECURITY FORCES
comrade GLADKOV.
city of Kaunas.

Having acquainted himself with your special report No. 1/933 of 10 May 1941 regarding the anti-Soviet manifestations from the direction of the former Tautiniki (Nationalists), Shaulisty (National Guardsmen), policemen and kulaks, in connection with the carrying out of the measures pertaining to compulsory grain deliveries to the State, People's Commissar of State Security of the Union of SSR—comrade MERKULOV—Ordered:

[3]

To ready for exiling into remote places of the Union of SSR of the anti-Soviet minded persons, who conduct active counter-revolutionary agitation.

Communicated to you for the execution.—
Deputy Chief of the Board 3 of the NKGB of the USSR
Captain of State Security Forces—
(Signature)
(SHEVELEV)

[4]

Chief of Division 4 of the Board 3 of the NKGB of the USSR
Captain of State Security Forces—
(Signature)
(RODIONOV)

[1] [Rubber stamped]
Secretariat of VSLK of LTSR [In Lithuanian]
Secretariat of NKGB of LSSR [In Russian]
RECEIVED [In Lith. and Russian]
1/7385 5 June 1941

[2] [Handwritten resolution]
C(omrade) Dembo
For execution.
(signed) Gladkov
4/VI 41 (4 June 1941)

[3] [Handwritten resolution]
C(omrade) Shebelev
1. I have given directions to the counties.
2. Elaborate in an operative consultation of the unit commanders.
8.6.41 (8 June 1941)
(signed) Todesas

[4] [Rubber stamped in a quadrangle]
2nd Division of VSV of VRLK of LTSR [In Lithuanian
2nd Division of UGB of NKVD of LSSR [In Russian]
RECEIVED [In Lith. and Russian]
10.VI.1941 Recvg. No. 2/2485

ANOTHER SEROV ORDER

Mr. JURGELA. Here is another Serov order, dated June 4, 1941, not published yet. It recites the measures which must be prearranged before the execution of the forthcoming operation. It deals with such minute details as providing paper and pencil for each participant of the operation, the type of arms and cartridges to be issued, and so forth.

[From the Lithuanian Bulletin]

Strictly Secret.

INSTRUCTIONS

REGARDING THE MANNER OF CONDUCTING THE DEPORTATION OF THE ANTI-SOVIET ELEMENTS FROM LITHUANIA, LATVIA, AND ESTONIA

1. GENERAL SITUATION

The deportation of anti-Soviet elements from the Baltic States is a task of great political importance. Its successful execution depends upon the extent to which the county operative triumvirates and operative headquarters are capable of carefully working out a plan for executing the operations and of foreseeing in advance all indispensable factors. Moreover, the basic premise is that the operations should be conducted without noise and panic, so as not to permit any demonstrations and other excesses not only by the deportees, but also by a certain part of the surrounding population inimically inclined toward the Soviet administration.

Instructions regarding the manner of conducting the operations are described below. They should be adhered to, but in individual cases the collaborators conducting the operations may and should, depending upon the peculiarity of the concrete circumstances of the operations and in order to evaluate correctly the situation, make different decisions for the same purpose, viz, to execute the task given them without noise and panic.

2. MANNER OF ISSUING INSTRUCTIONS

The instructing of operative groups should be done by the county triumvirates within as short a time as possible on the day before the beginning of the operations, taking into consideration the time necessary for traveling to the place of operations.

The county triumvirates previously prepare necessary transportation for transferring the operative groups to the villages in the locale of operations.

In regard to the question of allotting the necessary number of automobiles and wagons for transportation, the county triumvirates will consult the leaders of the Soviet party organizations on the spot.

Premises in which to issue instructions must be carefully prepared in advance, and their capacity, exists, entrances and the possibility of strangers entering must be taken into consideration.

During the time instructions are issued the building must be securely guarded by the administrative workers.

In case anyone among these participating in the operations should fail to appear for instructions, the county triumvirate should immediately take measures to substitute the absentee from a reserve force, which should be provided in advance.

The triumvirate through its representative should notify the officers gathered of the decision of the government to deport an accounted for contingent of anti-Soviet elements from the territory of the respective republic or region. Moreover, a brief explanation should be given as to what the deportees represent.

Special attention of the (local) Soviet-party workers gathered for instructions should be drawn to the fact that the deportees are enemies of the Soviet people and that, therefore, the possibility of an armed attack on the part of the deportees is not excluded.

3. MANNER OF OBTAINING DOCUMENTS

After the issuance of general instructions to the operative groups, they should definitely be issued documents regarding the deportees. Personal files of the deportees must be previously discussed and settled by the operative groups of townships and villages, so that there are no obstacles in issuing them.

After receiving the personal files, the senior member of the operative group acquaints himself with the personal files of the family which he will have to deport. He must check the number of persons in the family, the supply of necessary forms to be filled out by the deportee, and transportation for moving the deportee, and he should receive exhaustive answers to questions not clear to him.

At the time when the files are issued, the country triumvirate must explain to each senior member of the operative group where the deported family is to be settled and describe the route to be taken to the place of deportation. Routes to be taken by the administrative personnel with the deported families to the railway station for embarkation must also be fixed. It is also necessary to point out places where reserve military groups are placed in case it should become necessary to call them out during possible excess.

Possession and state of arms and ammunition must be checked throughout the whole operative personnel. Weapons must be completely ready for battle, loaded, but the cartridge should not be kept in the chamber. Weapons should be used only as a last resort, when the operative group is attacked or threatened with an attack, or when resistence is shown.

4. MANNER OF EXECUTING DEPORTATION

Should a number of families be deported from one spot, one of the operative workers is appointed senior in regard to deportation from the village, and his orders are to be obeyed by the operative personnel in that village.

Having arrived in the village, the operative groups must get in touch (observing the necessary secrecy) with the local authorities: chairman, secretary, or members of the village soviets, and should ascertain from them the exact dwelling of the families to be deported. After that the operative groups together with the local authorities go to the families to be banished.

The operation should be commenced at daybreak. Upon entering the home of the person to be banished, the senior member of the operative group should gather the entire family of the deportee into one room, taking all necessary precautionary measures against any possible excesses.

After having checked the members of the family against the list, the location of those absent and the number of persons sick should be ascertained, after which they should be called upon to give up their weapons. Regardless of whether weapons are surrendered or not, the deportee should be personally searched and then the entire premises should be searched in order to uncover weapons.

During the search of the premises one of the members of the operative group should be left on guard over the deportees.

Should the search disclose hidden weapons in small numbers, they should be collected by and distributed among the operative group. Should many weapons be discovered, they should be piled into the wagon or automobile which brought the operating group, after the locks have been removed. Ammunition should be packed and loaded together with rifles.

If necessary, a convoy for transporting the weapons should be mobilized with an adequate guard.

Should weapons, counterrevolutionary pamphlets, literature, foreign currency, large quantities of valuables, etc., be disclosed, a short search act should be drawn upon the spot, which should describe the hidden weapons or counterrevolutionary literature. Should there be any armed resistance, the question of arresting the persons showing armed resistance and of sending them to the county branch of the People's Commissariat of Public Security should be decided by the county triumvirates.

An act should be drawn up regarding those deportees hiding themselves before the deportation or sick, and this act should be signed by the chairman of the Soviet-party organization.

After the search the deportees should be notified that upon the decision of the Government they are being banished to other regions of the Union.

The deportees are permitted to take with them household necessities of not more than 100 kilograms in weight.

1. Suit
2. Shoes
3. Underwear
4. Bed linen
5. Dishes
6. Glasses
7. Kitchen utensils
8. Food—an estimated month's supply to a family
9. The money at their disposal
10. Haversack or box in which to pack the articles

It is recommended that large articles be taken.

Should the contingent be deported to rural districts, they are permitted to take with them a small agricultural inventory; axes, saws, and other articles, which should be tied together and packed separately from other articles, so that when embarking on the deportation train they are loaded into special freight cars.

In order not to mix them with articles belonging to others, the name, father's name, and village of the deportee should be written on his packed property.

When loading these articles into the carts, measures should be taken so that the deportee cannot use them as means of resistance while the column is moving along the highway.

At the time of loading, the operative groups together with representatives of the Soviet-party organizations shall prepare a list of the property and the manner in which it is to be preserved in accordance with instructions received by them.

If the deportee has at his own disposal means of transportation, his property is loaded into the vehicle and together with his family is sent to the designated point of embarkation.

If the deportees do not have their own means of transportation, wagons are mobilized in the village by the local authorities upon directives of the senior member of the administrative group.

All persons entering the home of the deportees during the execution of the operations or found there at the moment when these operations are begun must be detained until the conclusion of the operations, and their relationship to the deportee should be ascertained. This is done in order to disclose policemen, military police and other persons hiding from investigation.

Having checked the detained persons and ascertained that they are persons in whom the contingent is not interested, they are liberated.

Should the inhabitants of the village begin to gather around the home of the deportee during the operations, they should be called upon to disperse to their homes, and crowds should not be permitted to be formed.

Should the deportee refuse to open the door of his home in spite of the fact that he is aware that members of the People's Commissariat of Public Security are there, the door should be broken down. In individual cases neighboring operative groups performing operations in that vicinity should be called upon to assist.

The conveyance of the deportees from the villages to the gathering place at the railway station should by all means be done in daylight; moreover, efforts should be made that the gathering of each family should take not more than two hours.

In all cases throughout the operations firm and decisive action should be taken, without the slightest pomposity, noise and panic.

It is categorically forbidden to take any articles away from the deportees—except weapons, counter-revolutionary literature and foreign currency—or to use the food of the deportees.

All members of the operations must be warned that they will be held strictly responsible for attempts to appropriate individual articles belonging to the deportees.

5. MANNER OF SEPARATING DEPORTEE FROM HIS FAMILY

In view of the fact that a large number of the deportees must be arrested and placed in special camps and their families settled at special points in distant regions, it is necessary to execute the operation of deporting both the members of his family as well as the deportee simultaneously, without informing them of the separation confronting them. After having made the search and

drawn up the necessary documents for identification in the home of the deportee, the administrative worker shall draw up documents for the head of the family and place them in his personal file, but the documents drawn up for the members of his family should be placed in the personal file of the deportee's family.

The moving of the entire family, however, to the station should be done in one vehicle, and only at the station should the head of the family be placed separately from his family in a railway car specially intended for heads of families.

While gathering together the family in the home of the deportee, the head of the family should be warned that personal male articles are to be packed into a separate suitcase, as a sanitary inspection will be made of the deported men separately from the women and children.

At the stations the possessions of heads of families subject to arrest should be loaded into railway cars assigned to them, which will be designated by special operative workers appointed for that purpose.

6. MANNER OF CONVOYING THE DEPORTEES

It is strictly prohibited for the operatives convoying the vehicle-moved column of deportees to sit in the wagons of the deportees. The operatives must follow by the side and at the rear of the column of deportees. The senior operator of the convoy should periodically go around the entire column to check the correctness of movement.

The convoy must act particularly carefully in conducting the column of deportees through inhabited spots as well as in meeting passers-by; they should see that there are no attempts made to escape, and no exchange of words should be permitted between the deportees and passers-by.

7. MANNER OF EMBARKING

At each point of embarkation the members of the operative triumvirate and a person specially appointed for that purpose shall be responsible for the embarkation.

On the day of the operations the chief of the point of embarkation together with the chief of the echelon and of the convoying military forces of the People's Commissariat of Internal Affairs shall examine the railway cars furnished to see whether they are supplied with all necessities—(bunks, bed pans, lanterns, railings, etc.) and shall discuss with the commander of the echelon the manner in which the latter will take over the deportees.

Embarkation station shall be encircled by the soldiers of the convoying troops of the People's Commissariat of Internal Affairs.

The senior member of the operative group shall deliver to the commander of the echelon one copy of the list of deportees in each railway car. The commander of the echelon thereupon shall call out the deportees according to this roll and shall carefully check each family and designate their place in the railway car.

The possessions of the deportees should be loaded into the car together with the deportees, with the exception of the small agricultural inventory, which should be loaded into a separate car.

The deportees shall be loaded into railway cars by families; it is not permitted to break up a family (with the exception of heads of families subject to arrest). An estimate of 25 persons to a car should be observed.

After the railway car has been filled with the necessary number of families, it should be locked.

After the people have been taken over and loaded in the echelon train, the commander of the train shall bear responsibility for all the persons turned over to him for their reaching the destination.

After turning over the deportees the senior member of the operative group shall draw up a report to the effect that he has performed the operations entrusted to him and address the report to the chief of the county operative triumvirate. The report should briefly contain the name of the deportee, whether any weapons and counter-revolutionary literature were discovered, and how the operations ran.

Having placed the deportees on the echelon of deportees and submitted reports of the results of the operations performed, members of the operative group shall be considered free and shall act in accordance with the instructions of the chief of the county branch of the People's Commissariat of Public Security.

Deputy People's Commissar of State Security of the U. S. S. R.
Commissar of State Security of the Third Rank—

Signed: (SEROV).

Correct: (signed) MASHKIN.

Mr. JURGELA. It provides that persons among the local party-soviet aktiv who are expected to be drafted for the operation be selected in advance but that no one be informed about the forthcoming operations. In paragraph 3, it states:

Study thoroughly the instruction regarding the conduct of the operation, which is confirmed by Deputy People's Commissar—Comrade Serov."

It refers to several paragraphs of the basic Serov order by numbers. Serov, it must be noted, was not a minor plenipotentiary operating in an occupied country. He was Deputy People's Commissar of State Security of the Soviet Union, an Under Secretary according to our American terms.

The Serov instruction regarding the manner of conducting the operation of exiling the anti-Soviet element from Lithuania, Latvia, and Estonia is, by its very title, a document of international import. It is not an item of internal, domestic Russian jurisdiction. It was an international operation conducted by Russian political police and armed forces on the soil of occupied foreign countries whose independent sovereignty was recognized at the time, and continues to be recognized today, by the United States, Great Britain, all of Latin America, the British Commonwealth of Nations, and by other countries of the free parts of the world. This type of action demands an international jurisdiction should it be destined to come up for trial. This document represents an important proof for the need of the Genocide Convention.

DIVISION OF SEROV INSTRUCTION

The main Serov instruction is divided into several chapters: (1) "General Situation"; (2) "Manner of Issuing Instructions," that is, briefing as we understand it; (3) "Manner of Obtaining Documents"; (4) "Manner of Executing Deportations"; (5) "Manner of Separating Deportee from His Family"; (6) "Manner of Convoying the Deportees"; (7) "Manner of Embarking." One can observe from the titles of the chapters that it is a well-planned blueprint. To save time, we will omit the other details and call your attention to chapter 5 of the Serov order, which reads:

Because a large number of deportees must be arrested and placed in special camps, and their families settled at special points in distant regions, it is necessary to execute the operation of elimination of both, members of a family as well as the heads of families simultaneously, without informing them of their forthcoming separation. After the search has been made and necessary documents for the individual file have been drawn up in the exile's home, the operational worker must draw up documents regarding the family head and place them in the latter's personal file, but the documents drawn up for the members of his family must be placed in the personal file of the exilable family. The entire family must be transported to the station in one vehicle, and only at the

station of loading, the head of the family is to be separated from his family and placed in a railway car especially intended for heads of families. While gathering the family together in the exile's home, the head of the family must be forewarned that personal male articles are to be packed into a separate suitcase, because a sanitary inspection of the exiled men will be made separately from the women and children.

PROOF OF EFFORT TO ANNIHILATE

This mass deportation of women and children, not in any sense political opponents, is proof of the diabolical efforts to annihilate the Lithuanian Nation. The published orders of the NKGB, which carefully compiled daily and 5-day accounts and reports, embraced all non-Communists. In particular, clergymen, former public officials, party leaders, army officers, National Guard members, boy and girl scouts, philately and Esperanto enthusiasts, business people, independent farmers, home owners, and so on—all were listed as the people's enemies. The accounts bore subtitles: "Lithuanian National Counterrevolution," "Ukrainian National Counterrevolution," etc. Note the prefacing of each with the designation "National"—not social or political. Former employees of the American Legation, the American consulate, and business firms of the United States were specifically among the people's enemies. Dr. Michael Devenis, a physician of Waterbury, Conn., an American citizen, was detained in Lithuania and spent many months in Arctic Russia, including the Nova Zembla Island and Vorkutz—the very mention of which strikes terror in Lithuania today. He is the only American of Lithuanian extraction ever liberated from a Soviet death camp.

AMERICANS IN SOVIET SLAVE LABOR CAMPS

Other Americans are still missing in Soviet slave-labor camps. There is the case of Mrs. Carneckis, a native of Worcester, Mass. She married the Lithuanian Minister to Washington and went to Lithuania with him, but she retained her American citizenship and passport. The Russians deported Mrs. Carneckis, together with her children, to Siberia. After repeated intervention by our State Department during the war years, the Russians were willing to release her, but she would have to leave her children behind and she was not to know of her husband's fate or whereabouts. The former Miss Schultz of Worcester, Mass., is still somewhere in Russia. The Serov order is still in force.

LITHUANIAN COMPLAINT TO THE UN

In a memorandum dated October 3, 1949, the Supreme Lithuanian Committee of Liberation informed the United Nations of the series of major waves of genocide operations carried out by the Russians since their reoccupation of Lithuania. These operations were in addition to the systematic detention and exiling of from 2,000 to 3,000 persons monthly. The toll of Lithuanians murdered and exiled during the years 1941–48 was 300,000 victims of the Nazis occupation and 520,000 victims of the second Russian occupation. The net manpower losses since 1940 amounted to 30 percent of the indigenous population. For a small nation of 3,000,000 people, this is an irretrievable injury inflicted by a foreign state with which excellent relations had been maintained prior to the surprise invasion.

The memorandum pointed out that forcible collectivization of agriculture constitutes a refined method of genocide, which deprives the Lithuanians remaining in the homeland of their churches, of all personal freedom and property, of all contact with national culture, religious instruction, independent thinking. The opposition to collectivization cost 100,000 deportees in 1948 and 120,000 in the first half of 1949.

In addition to outright killings, deportations, suppression of national culture, and separation of families, the Nation is deprived of all normal life and the continuity of the Nation is stopped. Young men of Lithuania are drafted into Soviet armed forces to serve in Russia. Other young men and women are drafted into volunteer labor battalions for service in Russia. Children are forcibly taken away from their parents and sent to specialized training schools to be reared as Russian heathens.

GUERRILLA RESISTANCE

Lithuanian youths are waging an armed struggle as guerrillas and are dying fast. Prisoners are tortured in an unbelievable manner. Female prisoners are deliberately raped and infected with venereal diseases, and men's sexual organs are mutilated. Masses of Russians and Asiatics are brought in and settled in Lithuania. The picture of Russian misrule and oppression is too horrible to relate in detail.

GENOCIDE ON THE BALTIC

Genocide is being perpetrated in Lithuania, Latvia, and Estonia, East Prussia, eastern Poland, the Ukraine, and so forth. It is perpetrated by the political organs of Soviet Rusia, by Prussian armed forces in occupation of these countries and areas, and under the direction of the supreme state organ of the Soviet Union: The Politburo. Collateral genocidal operations at the same time are effected against prisoners of war of other innumerable nationalities. All told, it is multiple genocide, under all five heads of the definition of genocide, affecting many people and many races. It is international in its operations.

NEED FOR INTERNATIONAL COOPERATION

International cooperation is necessary to stop international crimes. Genocide is a more horrible crime than slave trade of the former ages, or piracy, or opium trade, or other crimes which are international in scope and are being suppressed by concerted international efforts.

International law is, after all, but a set of usages accepted by nations. The first step in developing new international standards is to accept the definition of certain acts and to denounce such acts as international crimes. When most members, or major members, of the international community of nations accept these standards, they become established international law.

The United States is a major member of the international family of nations bound to observe the principles of the United Nations Charter. Other countries are accustomed to look to us for moral leadership, and action by the United States is reflected in all corners of the globe. Can we with honor refuse to help establish internation law standards to make genocide an international crime? Our

refusal to ratify the genocide convention would be tantamount to encouraging Serov and his ilk to expand their genocidal operations and to ignore the Ten Commandments.

ENFORCEMENT OF CONVENTION WEAK

The problem of enforcement of the provisions of the convention must also be considered. I regret to say that a number of misunderstandings and rather confusing statements were made in this matter. The enforcement of the genocide convention is not as strong as we would like to see, but, on the other hand, it is not as weak as some people think it is. Certainly the enforcement cannot be stronger than the realities of international life permit. After all, this is a treaty between sovereign states and not a treaty dealing with occupied territory, as was the charter of the Nuremberg tribunal.

EFFECTIVE AGAINST AN OPPRESSIVE ELITE

In connection with the dicussion on enforcement, it was stated that genocide can be committed only by governments. I beg to differ with this opinion. Hitler's SA was a private organization before it became a State organization. So was the Communist Party before it came to control the government, while remaining a select organization, as Lenin said in 1918.

A case of genocide which recently happened in the subcontinent of India cost the life of more than a million people, and apparently it was committed not by a government but mainly by religious fanatics acting as private individuals.

A PRACTICAL INSTRUMENT

Somebody said that, since genocide can be committed only by governments, then it would be impractical to leave the jurisdiction with domestic courts. Let us examine whether the enforcement of the convention is left to domestic courts exclusively. Article 6 says:

> Persons charged with genocide or any of the other articles enumerated in article 3 shall be tried by a competent tribunal of the state in the territory of which the act was committed.

Every state has an international duty and, I stress it, the international duty to punish acts of genocide by its own court. This is not exclusive domestic jurisdiction if a state is internationally answerable for not fulfilling the duty. Article 9 gives the International Court of Justice the jurisdiction over interpretation, publication, or fulfillment of the present convention. If a state will not punish a case of genocide by its own courts, it will be referred by any party to the dispute to the International Court of Justice. This combination of international responsibility and the use of domestic courts offers rather a practical solution, and is certainly acceptable from the American point of view because the rights of defendants are safeguarded in accordance with the American judicial system.

Certainly the international court has no sheriff and no police at its disposal. It will have to rely on the United Nations for enforcement. But we cannot change now the Charter of the United Nations. A day may come when the Charter will be changed to make the United Nations stronger.

ARTICLE IV

From the point of view of the case in which I am most interested—namely, the case of the Lithuanians—I greet wholeheartedly article 4, which reads:

> Persons committing genocide or any of the other acts enumerated in article 3 shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.

This article is all-inclusive and does not give any legal escape to persons guilty of genocide. The Communist Party will be precluded from pleading nonguilty because they are not the government. On the other hand, all public officials, including members of cabinets, are responsible.

ARTICLE IX

What happens if the guilt cannot be pinned down on a certain person and if there is, however, the certainty that the state as such is guilty of genocide? In this case, article 9 applies, which speaks about the responsibility of the state for genocide. Obviously, a state cannot be imprisoned, but a judgment can be rendered establishing the responsibility of the state for genocide, and certainly political economic sanctions may be imposed.

The fact that the United States Government has proposed an understanding to the effect that responsibility of the state does not include damages for injuries inflicted by it on its own nationals does not change the situation. The responsibility of the state for genocide remains in every other field with the exception of private damages, and these other fields are important enough.

We think that this convention is as good as could be obtained under given conditions. Governor Stassen, while speaking in St. Louis, Mo., in favor of the Genocide Convention, said that this convention is useful in the relation to Russia even if the Soviet criminals cannot be brought before the bar of justice now. It is good to have a law on the books, and we all hope and pray that this law will be at once applied to the murderers of nations.

Had there been no Kellogg-Briand Pact, which was but a pious declaration, we would not have had an established concept of aggression and could not have developed our notions of opposition to forms of aggression. We would not have tried the major Nazi war criminals for conspiring against peace.

In conclusion, with to request the subcomittee to include in the printed record the resolution respecting the Genocide Convention recently voted by the Lithuanian American Congress and the letter of the monsignors appealing for ratification of this convention.

Senator McMahon. It will be so done.

(The matter referred to is as follows:)

LITHUANIAN AMERICAN COUNCIL, INC.,
Chicago, Ill.

RESOLUTIONS

DULY VOTED BY THE LITHUANIAN AMERICAN CONGRESS HELD ON NOVEMBER 4, 5, AND 6, 1949, AT HOTEL NEW YORKER IN THE CITY OF NEW YORK, UNDER THE AUSPICES OF THE LITHUANIAN AMERICAN COUNCIL, INC.

I. MESSAGE TO THE PRESIDENT

[By wire. Voted November 4, 1949, after the opening]

The Honorable HARRY S. TRUMAN,
President of the United States,
The White House, Washington, D. C.:

Delegates of 1,000,000 Americans, constituted in a Lithuanian American Congress meeting at Hotel New Yorker in the city of New York, unanimously send a message of greetings to the President of the United States.

Deeply touched by the sentiments motivating your policy as expressed in your message to this Congress, the delegates in behalf of themselves and their constituencies, reaffirming their undying loyalty to the principles of American democracy, pledge their loyal cooperation with your administration toward the goal of equitable domestic tranquillity and international peace founded on principles of national self-determination and the Atlantic Charter; in other words, on principles of freedom and justice which you invoke with God's help.

The Lithuanian American Congress will voice their views and aspirations in a set of resolutions after due deliberation, and copies thereof will be presented to the White House. At this time please accept our unanimous expression of gratitude for your unswerving policy of nonrecognition of the fruits of Nazi-Soviet partnership in aggression and for your continuing recognition of sovereignty of Lithuania, Latvia, and Estonia.

LEONARD ŠIMUTIS, *President.*
Dr. PIUS GRIGAITIS, *Secretary.*

II. MESSAGE TO THE APOSTOLIC DELEGATE

[By wire. Voted November 4, 1949]

His Excellency Archbishop AMLETO CICOGNANI,
The Apostolic Delegate, Washington, D. C.:

Delegates of 1,000,000 Americans, constituted in a Lithuanian American Congress meeting at Hotel New Yorker, in the city of New York, request Your Excellency to transmit their message of respects to His Holiness the Pope.

Gratefully recalling the incessant papal intercession in behalf of the martyred people of Catholic Lithuania and their just cause of liberty, the delegates beg His Holiness to bless and invoke divine guidance in their deliberations and their efforts seeking justice for the freedom-loving Christian people of Lithuania and other countries presently enslaved by militant Soviet communism.

LEONARD ŠIMUTIS, *President.*
Dr. PIUS GRIGAITIS, *Secretary.*

III. MESSAGE TO UKRAINIAN AMERICAN CONGRESS

[By wire. Voted November 4, 1949]

UKRAINIAN AMERICAN CONGRESS,
Washington, D. C.:

Delegates of 1,000,000 Americans, constituted in a Lithuanian American Congress meeting at Hotel New Yorker, in the city of New York, send their greetings and best wishes to their fellow citizens and fellow freedom fighters of Ukrainian descent. This congress wholeheartedly supports the just cause of the Ukrainian people as that of other liberty-loving peoples presently enslaved by Russian Soviet communism.

LEONARD ŠIMUTIS, *President.*
Dr. PIUS GRIGAITIS, *Secretary.*

IV. Basic Declaration

[Voted November 5, 1949]

The Lithuanian American Congress, representing by duly elected delegates the preponderant majority of Americans of Lithuanian descent or extraction, reiterates its constituency's devotion to the principles enunciated in the American Declaration of Independence, the Constitution of the United States, the Wilsonian "fourteen points," the Atlantic Charter, the "four freedoms," the Truman doctrine, the Universal Declaration of Human Rights, the Convention for the Prevention and Punishment of the Crime of Genocide, the objectives of the United Nations Charter, and North Atlantic Pact.

Firmly espousing the inalienable rights of men and nations, the principle of equality of men and races, the right of all peoples capable of self-government to pursue individual happiness and to develop their creative national talents in freedom under a representative form of democratic government, the sovereign equality of states, large and small, and international cooperation under the rule of reason, of justice, and of law, the Lithuanian American Congress carefully reviewed the events of the past decade and the deplorable state of international affairs at the close of the year 1949.

In old Europe, the cradle of modern civilization, a major half of the continent lies under the sway of lawless rule by a group of conspirators established in the Kremlin of Muscovy who had extended their police state regime over formerly independent peoples of the western Christian community of nations. The march of lawlessness and aggression initiated by Hitlerite Germany in partnership with Soviet Russia, has submerged in bondage the easternmost representatives of western civilization and democracy who had for centuries past defended Europe from barbaric onslaughts, to wit: Lithuania, Poland, Latvia, Estonia, Ukraine, Rumania, Bulgaria, Hungary, Albania, Yugoslavia, Czechoslovakia, and parts of Austria and Germany. Human rights are totally extinct in all of these countries. Western Christian religions are being forcibly eradicated in the Baltic States and the Ukraine; freedom of religion is constricted in other countries and formerly independent Christian churches are being subverted to serve the interests of the Communist Party and its political police. Living standards of the subjected peoples are lowered below the meager standards of Eurasian Russia. Millions of innocent people are being starved to death in slave-labor camps of Arctic Russia under a program of incessant genocide operations of unprecedented scale. The most formidable European races of the best fighting traditions are being molded into a mass of robots trained to destroy their own peoples and their friends of the western world.

Resistance to Communist enslavement first exemplified by heroic Finns in a defensive open war and taken up in underground resistance at first and in guerrilla operations later, by gallant Lithuanians, Latvians, Estonians, Ukrainians, and Poles, failed to evoke a world-wide understanding of the aspirations of these champions of the Atlantic Charter. The great democracies failed to champion the principles enunciated by themselves during World War II, and brave bands of patriots, abandoned by the signatories of the Atlantic Charter, are facing extinction in their lone fight for liberty against the armed might of Soviet Russia sustained by lend-lease. Nevertheless, underground resistance survives in the Baltic states, Poland, and the Ukraine, and is in the pangs of birth in other Communist-dominated European nations east of the Stettin-Trieste line.

In Asia, the most populous continent lies prostrate in convulsions. Militant communism is completing the subjugation of China and rearing its ugly head in other parts of the continent. The sun of freedom which had brightened the Asiatic horizon in 1945 is obscured, is setting under the hammering blows of lend-lease arms wielded by hosts directed by Moscow-trained conspirators. Unfortunately, the peoples which had recently gained their freedom at the hands of western European and American powers evince a deplorable lack of understanding of the Communist conspiracy and its methods, and heedlessly profess their neutrality.

On other continents, the situation is more promising, even though poverty and exploitation present a dangerous contingency not to be ignored by United Nations of the non-Soviet world.

In our own country, people are recovering from their short-lived artificially fostered "love Russia" complex and are awakening to the Communist menace to American security, to American ways of life, and to international peace. The American reawakening is occasionally attended by outbursts of intemperance.

Nevertheless, civil rights are imperiled nowhere in the United States, and there is every indication that Communist conspirators will be ultimately eliminated from the seats of power in the National Government and in labor unions.

The current international confusion is the heritage of the political errors and maladjustments of the fateful conferences of Tehran, Yalta, and Potsdam. Abandonment of the central-eastern European and Chinese peoples, the siege of Berlin, the veto-ridden United Nations, the huge armaments outlay, and the Marshall plan—are the price for the ill-advised arrangements imposed by Stalin on gullible western statesmen, constitutional representatives, and servants of the American and British peoples who posed as "chiefs of state" at the ill-fated conferences. These secret political decisions were never submitted for ratification, and were never ratified, by either the Senate of the United States or the Parliament of the United Kingdom. The Soviet Union itself had already violated and repudiated the letter and the spirit of the Yalta and Potsdam agreements.

Wherefore, thre Lithuanian American Congress respectfully submits to the President, Secretary of State, and Members of Congress of the United States:

That the Government of the United States rescind in toto the unratified political decisions of Tehran, Yalta, and Potsdam conferences, which were nullified by Soviet violations;

That, having abrogated the said unratified maladjustments, the Government of the United States reaffirm its determination to reconstitute peace in conformance with the principles of the Atlantic Charter applied to the friends and former foes alike, pursuant to the declaration by original United Nations of January 2, 1942, and the Russian adherence to said principles in the international treaties signed with the United Kingdom and the United States in 1942;

That the Government of the United States insist on the sanctity of treaties, much advertised by Soviet spokesmen since 1939, by demanding that the Soviet Union honor its international treaty obligations under the peace treaties and nonaggression and friendship pacts concluded by the Soviet Union with the Republics of Estonia, Latvia, Lithuania, and Poland in the period of 1920–38, and withdraw the Russian occupation forces and police-party apparatus from said states;

That the Government of the United States take cognizance of the existing threat to international peace and security in consequence of the armed struggle continuing in the Russian-occupied Baltic States and in the allegedly sovereign Ukraine, a member of the United Nations, and invoke applicable provisions of the United Nations Charter as a dutiful member of the United Nations and a permanent member of the Security Council;

That the Government of the United States reaffirm its policy enunciated on July 23, 1940, regarding the devious policies and predatory activities of the Soviet Union as part of a deliberate attempt to annihilate the political independence and territorial integrity of the Republics of Lithuania, Latvia, and Estonia, and, taking further cognizance of the barbarous Soviet policies applied against the Baltic peoples, invoke the aid of the United Nations in stopping the crime of genocide being perpetrated by the Government of the Soviet Union and its single ruling party.

V. The Genocide Convention

The Lithuanian American Congress expresses its gratification over the very active initiative of the United States Government in drafting the Convention for the Prevention and Punishment of the Crime of Genocide.

This convention was signed by a majority of the United Nations and is ratified by several states. Its ratification is currently pending before the United States Senate.

The Lithuanian American Congress views the need to ratify the Genocide Convention as an issue second only to the problem of liberation from bondage of the Baltic States and other countries enslaved by the Soviet Union in the aftermath of the late war.

The Genocide Convention repersents the first international legislation designed to effectuate at least one part of the universal declaration of human rights and to abolish the barbarous practices in mid-twentieth century.

Heedless massacres committed in the heat of passions by uncivilized barbarians in the ancient times were elevated by the Soviet and Nazi regimes into a status of a planned party-state policy which added more refined methods of genocide;

viz, planned starvation, sterilization, kidnaping of children, systematic disruption of family life of the allegedly inferior races and of the large segments of society at home and in occupied foreign countries, creation of conditions preventing a natural development of national cultures and religious life, and slow death by exhaustion at hard labor in the Arctic-slave labor camps.

These practices did not disappear with the United Nations victory over Hitlerite Germany and the publicized transformation of the Soviet dictatorial system into an allegedly "peace-loving and democratic" regime. Jews and certain Slavic people were the primary victims of the Nazi-managed genocide, not counting the masses of the German people opposing the Nazi system. The Lithuanians, Latvians, Estonians, Ukrainians, Volga Germans, Greeks, Crimean, and Caucasian peoples are presently the principal victims of the Russian-managed genocide, not counting the masses of the Russian people opposing the Communist totalitarianism.

Having fought two world wars in defense of the basic principles enunciated by two American Presidents and spontaneously adopted by other peoples, principally the long-suffering nationalities imprisoned within the former Russian, German, and Austro-Hungarian Empires, the American people are obviously determined to see these principles honored, especially by governments of the countries which were saved from destruction through American intervention in the wars and American lend-lease aid. Genocide is the most horrible crime which must not be countenanced by the civilized society and must not be encouraged by inattention, inaction, indifference, and failure to ratify the Genocide Convention.

Wherefore, the Lithuanian American Congress, in behalf of 1,000,000 constituents represented by the delegates voting unanimously for this resolution, respectfully urge their representatives in the United States Senate to ratify the Genocide Convention by an unanimous vote.

VI. Displaced Persons Legislation

The Displaced Persons Act of 1948 marked a significant congressional action developing out of a serious realization of the need for American contribution to the solution of the vast international problem of political refugees from the iron curtain countries and of the persons displaced in consequence of the ravages of war. American responsibility for the creation of the problem itself was large, inasmuch as the United States Government, as a party to the unratified political maladjustments of the Tehran, Yalta, and Potsdam conferences was responsible for the presence in western Germany, Austria, and Italy of the masses of people from countries which were committed at Yalta and Potsdam to the tender mercies of the Soviet Union and its cohorts of political police.

The DP legislation of 1948 represented a provisional compromise between the widely divergent views held by the respective congressional committees. The act is defective in several respects, particularly because of a comparatively small number of authorized admissions, the failure to provide for a priority to eligible persons who had spent most time in involuntary exile, acceptance of an unsatisfactory definition of "displaced persons" hammered out by the United Nations in the face of continuous disruptive Soviet misrepresentations and attacks, failure to provide for a fair proportional distribution of admissions among the ethnic groups, and particularly because of the unjust freezing of the small immigration quotas of the Baltic States.

The Congress failed to enact amended legislation in 1949, even though the House of Representatives had voted a Celler bill. The Celler bill contained some improvements, such as an enlarged number of admissions and a more equitable cut-off date. On the other hand, it retained the unjust provisions of freezing the immigration quotas and failed to provide for a priority to persons who had spent most time in involuntary exile. The Displaced Persons Commission pointed out other unworkable provisions, such as stiff housing guaranties, but its suggestions for amended liberalized legislation attacked principally the features which it termed "discriminatory" against Catholics and Jews. These arguments failed to convince the Senate committee which could not fail to note that the arguments of alleged discrimination were not borne out by facts and statistics.

Liberalized legislation for admission of displaced persons is needed, and the United States must share in the solution of the problem by accepting greater numbers of refugees from the iron-curtain countries. However, in solving the problem due attention should be paid to the element of justice. The unfreezing of the immigration quotas and elimination of the restrictions not contained in

the regular Immigration Act should receive serious attention in the enactment of liberalized legislation.

Calling these reflections to the attention of Members of Congress of the United States, the Lithuanian American Congress respectfully submits that these considerations be carefully weighed and that a liberalized Displaced Persons Act be enacted early in 1950.

VII. United Nations Organization

The Lithuanian American Congress commends the ably rendered service of the Lithuanian American Council in educating its constituency regarding the proper mission and organization of the United Nations. Back in 1945, at the San Francisco Conference, a memorandum was submitted by this council outlining very serious observations on the plan of organization and suggesting that the veto power be entirely eliminated. At that time, spokesmen for the bipartisan foreign policy were not prepared to concede the validity of these observations, fearing that the Senate of the United States would not renounce the veto power out of its regard for the extreme notions of sovereignty. By 1949, the abuse of the veto power by Soviet representatives at the UN Security Council has changed the views of a great many of our statesmen.

United Nations raised great hopes in the universe when its organization was planned and while the people firmly believed that the Atlantic Charter and the "four freedoms" would be fulfilled. These hopes faded as American and British policies floundered over the pitfalls of the gradually revealed secret commitments of Yalta and Potsdam. Some hope is still lingering, as gallant guerrilla forces continue to fight and die with the Atlantic Charter on their lips, in Lithuania, Latvia, Estoina, and the Ukraine. Resistance forces emerging in the sattelite countries of central Europe are recalling the self-same promise of the Atlantic Charter. But in the United Nations, the Charter is passed over in silence, inasmuch as the authors of the Atlantic Charter fail to champion it and are content with debating over harmless declarations carrying no obligation to enforce these declarations.

Nevertheless, the United Nations remains a useful organization not only as a forum for the discuss of international problems that might otherwise be settled in secret compromises, as at Yalta and Potsdam. Inheriting a number of international institutions from the late League of Nations, the new international organization developed and expanded their useful functions. It brought new institutions into play to deal on a more efficient basis with vast problems of the refugees, cultural exchange and information, economic cooperation, and so forth. The influence of these new institutions is beneficially exercised in the countries outside the Soviet orbit—as the Soviet single-party regime brooks no interference or propaganda within the territories brought under its control in consequence of the surrender of central-eastern Europe by the American and British Governments. This influence is beneficial in spite of the fact that persons not genuinely representative of the Christian outlook of civilization serve in international councils, and that Soviet agents are permitted to terrorize anti-Communist refugees committed to IRO care in the American, British, and French zones of Germany and Austria.

United Nations would be much more effective if the veto power were eliminated entirely and if majority decisions bound all members, particularly in security matters and in the employment of force against states menacing peace.

Furthermore, any aggrieved nationality should be enabled to present its grievance and to be heard. Some excellent precedents in this respect were provided in the case of the Indonesians and Israelis—but their cases did not involve grievances against the Soviet Union. The Baltic States, the Ukraine, representatives of the true will of the nations classed as "satellites," should be equally entitled and enabled to present their cases to the United Nations if that organization is to justify its existence as guardian of peace, security, and human rights.

VIII. Voice of America

While the facilities of the late OWI served to channel the spurious Soviet propaganda to the detriment of a number of occupied nations, the Voice of America and the United States Information Service have developed into major instruments of interpreting America, the American policy and a genuine reporting of world events to the people of the world, particularly to clandestine

listeners among the unseen multitudes enslaved by the conspirators of the Kremlin.

The standards of information have much improved within the past few years, and materials broadcast were made understandable to foreign audiences for whom they are intended. The number of languages employed is likewise expanding and embracing ever larger audiences.

These developments are warmly commended by the Lithuanian American Congress. Their effectiveness is well attested by the growing Soviet attempts to jam the Voice of America broadcasts and to bar the USIS personnel from direct access to the people of the occupied countries.

The Lithuanian American Congress respectfully submits that the facilities of the Voice of America broadcasts and other information services be expanded to include transmissions in the Lithuanian language. Information should be compiled in cooperation with spokesmen of the Supreme Lithuanian Committee of Liberation and, at least occasionally, broadcast in person by personalities well known and respected in Lithuania. Similar facilities should be directed toward informing the people of Latvia and Estonia. Limited information reaches the Baltic States through the medium of German, Polish, and Russian language broadcasts. But the masses of the population are excluded from sharing this information as long as it is not made available in the native languages understood by millions of survivors.

The Lithuanian American Council is authorized and directed to extend every coperation to Government agencies entrusted with this service in behalf of the American people.

IX. All-American Collaboration

The Lithuanian American Congress realizes the presence of objections to so-called hyphenated Americans in some sections of the country, alongside the existence of certain slavishness among the first- and second-generation Americans in their eagerness to assimilate superficial Americanism of their own imagination. Nevertheless, hyphenated Americans and second- and third-generation Americans are second to none in their supreme devotion to the United States and in their distinguished record in the war, both on the fighting and on the home fronts. They are second to none in their sense of civic duty, and they have a superior understanding of problems associated with the countries of their ancestors and enriching their cultural contribution to America.

This superior knowledge of specific European affairs should be placed at the service of the country and should be availed of by Government agencies concerned with such affairs. In addition to local activities and keeping the neighboring communities properly informed and immunized against subversive propaganda, coordination on a national scale would be most beneficial to the country and to the cause of liberty everywhere.

The Lithuanian American Congress commends the hitherto humble efforts at collaboration made by the Lithuanian American Council, and suggests that this cooperation be made permanent, particularly with like representative organizations of fellow Americans of Latvian, Estonian, Polish, Ukrainian, Slovak, Czech, Hungarian, Rumanian, Bulgarian, Yugoslav, and Albanian descent. All of these representative organizations have at their disposal numerous newspapers, magazines, and radio programs, and a well coordinated movement in behalf of a proper understanding of the problems of central-eastern Europe would best serve the conduct of American international relations on a well-informed and stable base.

X. Supreme Lithuanian Committee of Liberation

The Lithuanian American Congress welcomed the presence at the Congress of a number of former members of the Supreme Lithuanian Committee of Liberation (the VLIK), former underground leaders and guerrilla Freedom Fighters, and former prisoners of the NKVD and the Gestapo.

The underground resistance of the Lithuanian people, rising spontaneously since the first day of the Russo-German partnership in aggression and the first Russian occupation of the country, became a most effective movement under a coalition of political parties and resistance combat units—the VLIK. All of the German plans of mobilization of Lithuanian manpower and economic resources failed completely, and Lithuania was one of the only two European countries which, during the Nazi occupation, failed to produce SS legions for Hitler. The passive resistance under the leadership of the VLIK and its clandestine

network of information services ultimately developed into armed resistance to the German occupation and to the second Russian occupation. The experience in clandestine resistance activities gained under the VLIK leadership enabled the Lithuanian people to continue to this very day their resistance to the most barbaric Soviet occupation.

Political collaboration between the VLIK and the diplomatic missions of the Lithuanian Republic still recognized in the capitals of the western democracies, presents another aspect of political maturity of the Lithuanian people and the unbroken unity of views and aspirations of the people surviving in the homeland and their spokesmen abroad.

The Lithuanian American Congress extends, through the Supreme Lithuanian Committee of Liberation, its greetings and expression of the most profound admiration for the gallant Lithuanian Freedom Fighters still waging battle against the dark forces of enslavement and oppression in Russian-occupied Lithuania, and for their good neighbors and friends in Latvia and Estonia.

Lithuanian Americans not only admire the fight for freedom of the Lithuanian people, and of the Latvian, and Estonian peoples. They will continue to render, as they had in the past, every moral and political encouragement and assistance to the heroic forces of freedom in Lithuania and the other Baltic States, until these martyred peoples shall achieve complete liberation of their homelands to resume their proper place, as masters of their own destinies, among the community of free nations.

XI. Self-Determination and Reunion of All Lithuanian Lands

The Lithuanian American Congress welcomes the activities of the Council of Lithuania Minor, spokesman for the indigenous Lithuanian population of northern East Prussia, seeking a reunion of their homeland with the sovereign Lithuanian State.

Survival of the Lithuanian speech, customs, and national orientation in northern East Prussia after nearly seven centuries of thralldom under the German rule, presents a most heartening example of the Lithuanian fitness of survival and of a Lithuanian individuality. The aspirations for a reunion with a preponderantly Roman Catholic Lithuanian State prove a genuine fraternal feeling and a great trust in the traditional Lithuanian religious tolerance which Protestant Lithuanian inhabitants of East Prussia repose in their brethren of Lithuania Major.

The Potsdam decision granting a tentative American and British support to the Russian claim to northern East Prussia violates every tenet of historic honesty, political vision, the right of self-determination, the principles of the Atlantic Charter and the spirit of the United Nations Charter. This tentative decision, made without the advice and consent of the American people and of the population directly concerned, would condemn all of the Baltic peoples north of the Braunsberg-Goldap line in East Prussia to slavery and extinction under Russian totalitarianism. Russia has no historic, ethnic, national, economic, cultural, or security title to the Lithuanian areas of East Prussia, and a Russian or pseudo Byelorussian military-naval base at Königsberg could only serve as a springboard and bridgehead for further Russian aggression and expansion westward.

Wherefore, the Lithuanian American Congress respectfully submits to the President, Secretary of State, and Members of Congress of the United States that the Potsdam promise of support for Russian imperialist claims to northern Lithuanian half of East Prussia be rescinded, and that the United States espouse the legitimate aspirations of the indigenous population of that area to reunite with the sovereign and independent democratic Republic of Lithuania. Furthermore, that Lithuanian inhabitants of East Prussia, presently classed and treated as nationals of Germany, be reclassified as Lithuanian displaced persons and refugees, entitled to American protection from the tentacles of Russian repatriation missions and from forcible Germanization, or cultural genocide.

XII. Gratitude to Resettlement Agencies

The rolls of delegates to the Lithuanian American Congress were swelled with numerous new Americans who until recently had been nameless displaced persons.

Among these new Americans taking an active and intelligent part in the deliberations of this congress were former statesmen, functionaries, diplomats, scientists, professionals, teachers, army and navy officers, university students,

clergymen, friars, excellent agronomists and farmers, artists, laborers, stage and opera stars, former guerrilla fighters and victims of Russian and German concentration camps. Among them were Catholic, Protestant, and liberal men and women, former leaders and members of political parties of the right, center, and left, business people and labor union leaders. Their spirit of genuine democracy and tolerance, and high regard for human dignity and freedoms, proved that they will become, as a great many already had done, excellent American citizens with a highest sense of civic duty. Their model use of the ancient Lithuanian language coupled with their equally facile use of the English language, evoked a feeling of profound pride among the second and third generation Americans of Lithuanian descent who formed a majority at this congress.

These new Americans, the former DP's were welcomed with warmth of feeling by the old Americans.

The new Americans have found shelter and opportunity for a resumption of normal life on the hospitable shores of America thanks to the wisdom of the Executive Government and of Members of Congress of the United States who made Displaced Persons Act a living reality, and thanks to the charity and selfless devotion of the National Catholic Welfare Conference and its war relief services and Resettlement Council, the Church World Service of the American Protestant Churches, the International Refugee Rescue Committee, the American Friends Service, Jewish voluntary agencies, and other American organizations which sponsored the program of resettlement in America of former DP's. Their combined efforts, their devotion and material contributions enriched the American community with more than 100,000 men, women, and children of finest qualities.

The Lithuanian American Congress unanimously voted to commend the executive and legislative departments of the United States Government, and the voluntary agencies mentioned above, for their excellent contribution and humanitarian service in rehabilitating the victims of Nazi-Soviet partnership in aggression and enslavement. The National Catholic Welfare Conference is particularly gratefully commended for the great assistance rendered in aiding Lithuanian DP's, more than three-fourths of the Lithuanian refugees, of various religious affiliations, who had arrived in this country under displaced persons program, were resettled by the Catholic agency without discriminating among Catholics, Protestants, and persons not affiliated with any Christian church.

XIII. On Conspiracy of Silence and Pro-Russian Discrimination

A number of American organizations have sprung up within the past few years purporting to halt communism and save our freedom, to aid iron curtain refugees, to present a common cause of the Soviet enslaved peoples, etc.

As a general rule, these committees are not in any way associated with representative organizations of the American people most directly concerned with problems of the nations enslaved by Russia. Second phenomenon common to such committees is the long list of members of their boards, enumerating on their stationery persons formerly highly placed with Government departments, thus tending to create an impression of intimate association with policy-making media. At least one such organization features its endorsement by the Secretary of State.

Unfortunately, another phenomenon common to some of these committees is the pro-Russian bias and evasion of mentioning the Baltic States.

One such committee, endorsed by the Secretary of State, and listing among its board of directors a former Under Secretary of State, several former Assistant Secretaries, department heads, officials of the OSS, ambassadors, the former supreme commander of the liberating Allied forces in western Europe, etc. Gifts to this committee are said to be deductible for income tax purposes. The objectives are most commendable.

However, the map printed in its informative leaflet contradicts the official policy of the United States, in effect since July 23, 1940, in that it shows the territories of Estonia, Latvia, Lithuania, one-half of Poland, northern East Prussia, Carpatho-Ukraine and sections of Rumania as territories of the Soviet Union. "New" Poland and Czechoslovakia, Rumania, Hungary, Yugoslavia, and "old" Bulgaria are shown in different color, to illustrate the countries meriting the interest of this committee. The Baltic States and Albania are shown outside the area. The printed text repeats the list of countries, again excluding the Baltic States and Albania, and recites that 80,000,000 sturdy people living between Germany and Russia are now in bondage. A conclusion is obvious that many other

millions—in the Baltic States, Albania, Poland east of the Curzon Line, the Ukraine east of Slovakia and the Pruth, as well as in Russia itself—are not now in bondage.

The Lithuanian American Congress, taking note of the existence of such organizations misrepresenting the official policy of the United States while professing to have the endorsement of the present Secretary of State, calls the attention of the Secretary of State and of the distinguished fellow Americans serving on boards of such committees, to the misguided use of their endorsement, and respectfully suggests that they owe a duty of honor to correct the misrepresentations made ostensibly with their endorsement.

Furthermore, certain map publishers and map syndicates contribute to Soviet propaganda and to misinformation of American school students and newspaper readers, by publishing maps featuring Russia in its new frontiers, lacking any international recognition. A particularly painful impression is created by the use of such synthetic maps in the press sympathetic to the cause of liberty of the Baltic peoples and antagonistic to the predatory subversion of communism.

The Lithuanian American Congress calls on the editors and publishers of the free American press to exercise their right of calling to the attention of map-making syndicates the harm and disservice to the American people which they render by channeling Soviet imperialistic propaganda to American children and news readers. Maps shown in the official publications of the Department of State could best be utilized, and would contribute toward a better understanding of American foreign policy.

XIV. Thanks to Distinguished Statesmen

The Lithuanian American Congress unanimously expresses greatest appreciation and gratitude to the many distinguished statesmen who lent their moral encouragement and sympathy with the objectives of a just and stable peace which motivated this congress.

President Harry S. Truman of the United States transmitted a warm message in writing. This congress found itself in unanimous agreement with the goal of freedom and justice which the President is seeking.

Gov. Thomas E. Dewey of the State of New York honored this congress by addressing it in person. His views coincided in a great many aspects with the policies advocated by Lithuanian-Americans.

Senator Herbert R. O'Conor and Representative Daniel J. Flood addressed the congress, and affirmed their cooperation with the basic demands for justice and liberation of Lithuanian and the other Baltic States.

United States Senators Scott W. Lucas, Robert A. Taft, Henry Cabot Lodge, Jr., and Millard E. Tydings, Brien McMahon, Irving M. Ives, John Foster Dulles, William F. Knowland, Homer E. Capehart, Owen Brewster, John J. Williams, Paul H. Douglas, Leverett Saltonstall, Sheridan Downey, and Edward Martin, and Representatives John W. McCormack, Philip J. Philbin, Adolph J. Sabath, John J. Rooney, John Davis Lodge, Lawrence H. Smith, Ivor D. Fenton, Ray J. Madden, James J. Murphy, Edgar A. Jonas, Harold D. Donohue, Charles A. Buckley, Landsdale G. Sasscer, Peter W. Rodino, Jr., Edward A. Garmatz, George H. Fallon, and Barratt O'Hara transmitted their statements and declarations which greatly encouraged the delegates in their deliberations and in their hopes of ultimately achieving justice and understanding for the peoples of Lithuania, Latvia, Estonia, and other nations enslaved by Russia.

Bishop Joseph F. Flannelly of the Catholic Archdiocese of New York touched the delegates with his profoundly Christian sermon at St. Patrick's Basilica in New York, and his moving encouragement and blessing.

Mayor William O'Dwyer of New York City, through Deputy Mayor John J. Bennett, welcomed the delegates to the greatest American city and voiced views which convinced the delegates that the American people are practically unanimous in supporting the administration's policy of nonrecognition of the fruits of Nazi-Soviet partnership in rapacity, and in demanding liberation of Lithuania and other freedom-loving peoples from bondage.

Their Excellencies, Povilas Zadeikis, Julijs Feldsmans and Johannes Kaiv, the Ministers of the Republics of Lithuania, Latvia, and Estonia accredited to the Government of the United States, and their diplomatic and consular colleagues who addressed the Lithuanian American Congress, greatly contributed toward a most realistic understanding of the direst situation of their victim-

ized nations. The Lithuanian American Congress found itself in full accord with their pleas for justice and demand to stop the crime of genocide being perpetrated by the Russian occupant of their countries.

The Lithuanian American Congress:
Leonard Simutis, *President.*
Anthony A. Olis, *Vice President.*
Pius Grigaitis, *Secretary.*
Michael Vaidyla, *Treasurer.*
Resolutions Committee:
Constantine R. Jurgela, *Chairman.*
Matas Zujus, *Secretary.*
Msgr. John Balkūnas,
John Januskis,
Stanley Geguzis,
Dr. Matas J. Vinikas,
Jonas Valaitis,
Vincent Rastenis,
Vytautas Abraitis,
Members.

(The letter of the monsignors, submitted by Mr. Jurgela, is as follows:)

[From the Congressional Record, October 19, 1949]

TO OUTLAW GENOCIDE

[Letter to the editor of the New York Times dated October 15, 1949]

TO OUTLAW GENOCIDE—ADOPTION OF CONVENTION IS URGED IN CITING SOVIET ACTIONS

To the EDITOR OF THE NEW YORK TIMES:

In September 1949 your correspondent Cyrus L. Sulzberger reported new waves of genocide perpetrated by the masters of the Kremlin on the Armenian, Estonian, Greek, Iranian, Jewish, Latvian, Lithuanian, Turkish, Ukrainian, and White Ruthenian peoples.

The convention for the prevention and punishment of the crime of genocide, currently pending for ratification before the United States Senate, fills an acute need of our times and is of especial relevance to the fate of a number of nations now under Soviet rule. Every sentence of this convention is borne out by the sufferings of millions of innocent men, women, and children who are being destroyed en masse as part of a gigantic plot to obliterate certain peoples.

The text of the convention was not made as broad as it might have been. Nevertheless, the definition of genocide includes willful destruction, in whole or in part, of a national ethnical, racial, or religious group and embraces such acts as (*a*) killing members of the group; (*b*) causing serious bodily or mental harm to members of the group; (*c*) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (*d*) imposing measures intended to prevent births within the group; (*e*) forcibly transferring children of the group to another group.

NOT PROPAGANDA

It was reported that at a recent meeting of the bar association a delegate claimed that the stories of genocide in the Baltic countries were propaganda. He can rest assured that these stories are as much propaganda as the former, and present, existence of the Buchenwald and other concentration camps in Germany; and that thousands of American families are directly affected by the Russian-conducted genocide in Lithuania, Latvia, Estonia, and the Ukraine. In every one of the 124 Lithuanian-language Roman Catholic parishes in this country families are mourning members who were either murdured or exiled by the Russian invaders. At least one American, Dr. Michael Devenis, of Waterbury, Conn., has come out of a Soviet Arctic camp, and other native Americans of Lithuanian extraction are still unaccounted for in Siberia.

The pattern of genocide in Lithuania and the other Baltic states conforms to the letter of the definition of the crime in the convention—under all five counts.

The direct killings and mutilation of the clergy and intellectuals of this predominantly Roman Catholic country failed to bring about a surrender of the

remainder of the nation to barbaric alien rule. So the Russians deliberately inflicted conditions of life calculated to bring about its physical destruction, in whole or in part, by intensified mass deportations and forcible collectivization.

Since the infamous "Serov Instruction," whose original is in this country, deportations proceed without fuss or panic, in the dead of night, and families are invariably split up. The instruction provides that families be driven intact "to points of concentration," and there be separated under the pretext of sanitary inspection. Thereafter, heads of the families are put on board one train and members of their families are boarded up on other trains going to destinations thousands of miles apart. Such measures clearly prevent births within the group and disrupt the continuity of the nation. This last form of genocide acts like a time bomb—the nations subjected to Russian rule are doomed to extinction.

Finally, children are taken away from parents, to be brought up as Russians and atheists. In 1941 thousands of Lithuanian children were taken to "summer camps" at Palanga, Druskininkai, and elsewhere, and thence were removed to the Urals and Turkestan. Nothing was known of their fate until, late in 1946, one of them, an American boy visiting Lithuania since 1939, made his way from the Urals to western Germany. Men of Lithuania sleep outside their homes. For this reason, most of the more recent deportees are women, children, and babes in arms. It must be noted that more than 700,000 persons have disappeared from the country under Soviet auspices prior to 1948. Some 200,000 persons vanished in 1948, and other victims are rounded up to this date.

FATE OF BALTIC NATIONS

Lithuania was the last European nation to embrace Christianity. The Christion world looks with seeming indifference on the willful destruction of the eastern European Catholic and Protestant nations in the midst of the twentieth century. Destruction of the Baltic nations with their original cultures, with their ancient languages, proud traditions, and a great devotion to western civilization and Christianity, should not only shock the conscience of mankind but should start a strong movement of protest throughout the world. This is not propaganda or a domestic concern of Russia—to whose rule these nations were betrayed by the Ribbentrop-Molotov pacts of 1939. This can happen to any people anywhere on the globe. Just as anyone may fail a victim of homicide, so any nation may become a victim of genocide.

We greet wholeheartedly the action of the United Nations in adopting the Genocide Convention. We express our gratitude to the 29 nations which have already signed it (Russia was not one of them), and to the 4 nations which have already ratified the convention. Human conscience must redeem itself by finding a legal form of condemning the barbarity of genocide.

We hope all the signatory nations will follow soon with their ratification, and we appeal to the distinguished Members of the United States Senate to ratify the Genocide Convention.

The Right Reverend Monsignor Michael L. Kruszas, Pastor, St. George's Parish, Chicago, Ill.; the Right Reverend Monsignor Joseph K. Miliauskas, Pastor, St. Joseph's Parish, Scranton, Pa.; the Right Reverend Monsignor John Ambotas, Pastor, Holy Trinity Parish, Hartford, Conn.; the Right Reverend Monsignor Casimir Urbonavicius, St. Peters' Rectory, South Boston, Mass.; the Right Reverend Monsignor Joseph A. Lipkus, Pastor, SS. Peter's and Paul's, Grand Rapids, Mich.; the Right Reverend Monsignor Stanley A. Dobinis, Pastor, Holy Cross Parish, Mount Carmel, Pa.; the Very Reverend Monsignor John Balkunas, Pastor, Transfiguration Parish, Maspeth, N. Y.; the Very Reverend Monsignor A. Briszko, Pastor, Immaculate Conception Parish, Chicago, Ill.; the Very Reverend Monsignor B. Urba, St. Casimir's Academy, Chicago, Ill.

CHICAGO, *October 15, 1949.*

Mr. JURGELA. In this connection, I would like to mention that Monsignor Kruszas, who was the first to sign this letter, died just a week ago.

COMING DEFEAT OF COMMUNISM

Mr. Chairman, I heard your discussion with Professor Dobriansky regarding the feasibility or possibility of maintaining contact between this side of the iron curtain and the other side of the iron curtain. In this connection, I would like to commend very highly to you the book of Prof. James Burnham, which is going to come out of print within a week or two, called The Coming Defeat of Communism.

Senator McMahon. Burnham?

Mr. Jurgela. Burnham.

Senator McMahon. You mean the professor at New York University?

Mr. Jurgela. Yes. He advises utilizing every possible means. He acknowledges that we were in a state of war with Russia since 1944, because in 1944, when the Russians were certain that Germany would be defeated, they immediately went back to their Communist world-revolution program, and they imposed their government by subversive means upon Albania, Yugoslavia, and everywhere, and we were helping them along. Now, little by little, we are recovering. The time may come when military action may not even be necessary, because they took over the Baltic States in 1940 without firing a single shot—they took possession of the armies. The same thing was repeated later in Czechoslovakia—an excellent army, but it was taken over by the Communists without firing a shot. If our military authorities are thinking that we have to prepare for a war eventually, and to visualize only the military operations field, they may be entirely wrong, because they might take us over, or any other country, by these subversive movements.

AN EASTERN EUROPEAN UNIVERSITY

In this connection, we advocate very firmly that we should maintain such institutions like they had in Germany, the Baltic University, and to establish an Eastern European University, to be maintained fairly cheaply by us, so as to encourage these people to resistance and to utilize all these liberation movements in the countries occupied by the Russians and the Baltic States, the Ukraine, and the Asiatic countries, and so forth, and we should, little by little, cut down the security of the Russian state itself, and if we succeed, military warfare might not even become necessary at all.

Senator McMahon. That has long been a belief of mine, too.

Mr. Jurgela. If you don't mind, Senator, I would be very glad to send you a copy of that book.

Senator McMahon. Thank you very much.

Before you go, article 9 of the convention—the Russians put a reservation on that. You realize that, don't you?

Mr. Jurgela. Yes, I know.

Senator McMahon. As well as on article 12.

RUSSIAN DEFINITION OF GENOCIDE

Mr. Jurgela. You see, Senator, when they were discussing the definition itself, the Russians had a considerably broader definition of genocide. They included all sorts of political and cultural genocide.

In the preparation of such instructions like Serov's, they knew what they were talking about.

Senator McMahon. You mean that was within their definition of genocide?

Mr. Jurgela. Yes, that was within their definition, with one exception.

Senator McMahon. You see, what they have in mind, I guess, is to keep up this iron curtain and murder at will behind it, so that they think you don't know and you can't complain, and then when anything goes wrong anywhere in the rest of the world, they start up with a great holler and clatter about how somebody is being deprived of their rights. That is part of their game, and that is undoubtedly one of the things they try to do under this convention: murder at home and holler abroad.

Mr. Jurgela. That is right.

Senator McMahon. All right, sir, thanks very much, indeed. Send me that book.

Mr. Jurgela. I will.

Senator McMahon. We will take a 10-minute recess.

(Whereupon, a short recess was taken.)

Senator McMahon. All right, we are in session.

The next witness is Mr. Anthony Batiuk.

STATEMENT OF ANTHONY BATIUK, PRESIDENT, UKRAINIAN WORKINGMEN'S ASSOCIATION

Mr. Batiuk. Mr. Chairman, my name is Anthony Batiuk. I am President of the Ukrainian Workingmen's Association, which is for the purpose of promoting fraternally the brotherhood among Americans of Ukrainian descent. On behalf of 18,000 of these members, I thank you for the opportunity to present the genocide practiced by the Russians against the Ukrainian people in the so-called Soviet Ukraine, because to my mind, it has typified these horrible crimes against humanity.

WANT THE TREATY IN SPITE OF U. S. S. R. PERSECUTIONS

Senator McMahon. Isn't it strange that you people have all been here today and you want this treaty ratified, and you want it ratified on the basis of what the Russians have done to your people, and yet they have signed the convention, they have signed the treaty.

Mr. Batiuk. Yes; they might sign anything, but the question is whether they intend to adhere to any treaty or to any signing. What is good to them, what is the policy dictated at the moment, they are doing, but their ultimate purpose is to overrule the world for the Communists, to conquer the world. That is their aim, to my way of thinking.

The history of the Ukrainian people under the Soviet regime is the story of organized terror and oppression of the Ukrainian people by the ruthless rulers of the Kremlin. The aims of Moscow always were and still are to destroy the Ukrainians as an ethnic and national group.

FIRST DAYS OF THE BOLSHEVIKS

From the first days when the Bolsheviks came to power, the Ukrainian people resisted the Communists. This resistance, at the beginning, had the character of an open defensive warfare directed against the Soviet armed invasion of Ukrainian territories. In November of 1920, lacking arms, the Ukrainian army was defeated by the Bolsheviks and active resistance thus ended. All resistance, however, did not cease. From active resistance, the subjected Ukrainians turned to passive resistance—noncooperation with the Soviet policies. In order to overcome this passive resistance of the Ukrainian people, the Soviet authorities planned and applied an organized terror with mass arrests, trials, execution, and deportations of the Ukrainian peasants, tradesmen, and intellectuals. Then came the terrible, planned famine of 1921 and 1922 and the great famine of 1932 and 1933.

FAMINE OF 1921 AND 1922

In the famine of 1921 to 1922, some outside help was allowed to trickle through, but the motive of the Bolsheviks was not above reproach, particularly when we read the words of Prof. H. H. Fisher in his book Famine in Soviet Russia. Professor Fisher was one of the representatives of the American Relief Administration, an agency which went to the aid of the stricken people of Russia in 1921 and 1922. From his publication, Professor Fisher quotes:

> From the first, the Moscow Government had discouraged all proposals which tended to bring the ARA into contact with the Ukraine. The Communist Party's Ukrainian famine policy is difficult to explain. One cannot escape the feeling that fear or political expediency or both influenced the official policy in those regions.

The grim facts of this famine in 1921 and 1922 reveal that 3,000,000 people died of starvation in Ukraine, and Soviet's Chicherin's note of August 3, 1921, to all governments did not list Ukraine's provinces—Gubernias—among the distressed. More remarkable was the attitude of the Soviet authorities in matters regarding the greater and more horrible famine of 1932–33. When news of the people starving in one of the world's most productive lands first reached people in territories beyond the boundaries of the Soviet lands, immediate and continued denials were issued by Moscow.

SECOND FAMINE OF 1932–33

Despite the Soviet official denials, the famine of 1932–33 was known to exist. Thanks to some courageous members of the free press in democratic countries, not only the famine but also other Soviet reprisals were reported. And now, with former citizens of the Soviet Ukraine arriving in the United States and Canada, we are able to hear more detailed stories from actual eyewitnesses of the famine and other Soviet terrors.

What price did the Ukrainians pay during the second famine of 1932–33? The gruesome story will probably never be known in its entirety. Estimates vary from 4,000,000 to 10,000,000. For example, William Henry Chamberlain, one time Moscow correspondent for the Christian Science Monitor, estimated that more than 4,000,000 people

died of starvation during that period. Professor Solovy, in his work Changes in the Population of Ukraine, places the figure at approximately 4,300,000. Since the loss in the birth rate during the period to about 2,700,000—Ukraine's total loss of population was about 7,000,000. A very thorough account, based largely on Soviet sources, may be found in the second volume of the Encyclopedia Ucrainica.

NEWS OF THE FAMINE ABROAD

Of the newspapers which revealed the news about the famine in Ukraine during 1932–33, for lack of space, we can cite only a few of the following: The Manchester Guardian, London, September 1933; the New York Times, August 1933; the Montreal Daily Herald, April 1933; the Jewish Daily Forward, New York, December 1933; the Matin, Paris, August 1933; Answers, London, February 1934, and March 3, 1934—an article by Mr. Williams titled "My Journey Through Famine-Stricken Russia"; Nation's Business, Washington, D. C., December issue—another article by the same Mr. Williams; Christian Science Monitor, May 20, 1934—a report by William H. Chamberlain—article titled "Famine Proves Potent Weapon in Soviet Policy."

The following are some of the names of men and women, now living in the United States and Canada, who were citizens of Soviet Ukraine and who eyewitnessed what went on in their country during those years. They came to the United States and Canada as displaced persons. We have their signed statements which are translated into the English language, and I would like, if the committee would allow me, to put them in the record.

Senator McMahon. Yes, sir; they will be entered in the record.

(The matter referred to is as follows:)

I. TESTIMONY OF SERHI FURSA, DETROIT, MICH.

(At the time of the famine, Serhi Fursa lived in the area of Mariopol.)

"The crops of 1932 were quite good and I had the unfortunate experience of witnessing countless numbers of people starving to death. They were children and adults—representing all ages.

"Two days I shall never forget—one on a collective orchard farm and the other on a trip to Stalino (Yousovka). First let me tell you of my experience on the collective farm—

"That day I saw 500 emaciated men brought by the militia to the same collective farm orchard where I was employed. They were from different parts of Ukraine and from them—from their own lips—they told me that the authorities asked them to give up all of their grain for which they would receive baked bread. All the grain was taken and no baked bread was given as promised. The leanness of their bodies with swollen stomachs was evident that they had no food for countless days.

"Regardless of their weakness they were brought to work on the same collective farm orchard where I was employed. The director of the farm asked the local authorities for food for these unfortunate people but all of his requests were in vain.

"Day after day went by, and without any food these unfortunate people began to die. In due course of time, all died except about 15—and these were saved by farm workers like myself who cheated ourself of our allotment to give to those who survived. We could not feed all of the 500. And those who perished from starvation—during the burial of the corpses would often tear off an ear and eat hoping to stave off death. This was in 1932—and the crops in that year were quite good."

* * * * * * *

"Another day I shall never forget was when I was on a trip to Stalino (Yousovka). At the station I saw police searching all passengers for food. On one of them, they found about two pounds of barley and two loaves of bread. The man from whom they seized the bread and barley pleaded in vain with the police telling them that it was for his wife and children who were dying from starvation. Other passengers pleaded with the police but they were bluntly ignored. Before the train left Stalino, the man from whom the barley and bread were taken—in desperation the man flung himself under the passing train."

2. TESTIMONY OF VASYL FUTALA, OF THE VILLAGE OF BEREHY, COUNTY SAMBOR, WESTERN UKRAINE, NOW LIVING IN NEW YORK CITY

He testifies:

"I witnessed mass deportations of Ukrainians in western Ukraine, Galicia, which was part of Poland prior to World War II.

"In 1941, after the outbreak of the German offensive against the Russians, all prisoners in Sambor prison in western Ukraine were executed without any trial. I knew many of the victims. Some of them I can recall. For example, Vasyl Plachti, the cooperative worker, Roman Monastersky, the physician Chomin, the student Eugene Uniatovich, and many others.

"I recall them because I was looking for my cousin, Nicholas Rogudy, a former member of the Polish Parliament representing the Social-Radical Party, who had been arrested sometime beforehand. In the cellars of the prison, I saw heaps of corpses among them that of my cousin, Rogudy. Most of them were decomposed and it was recognized only by commercial labels on the clothing.

"The torture that was meted out was beyond description. But deductions can be made from the bashed skulls, mouth cavities stuffed with broken glass, ear cavities with nails, et cetera. These massacres took place about 2 or 3 days before the Soviet retreat from Galicia (western Ukraine) before the invasion of Hitler's armies."

3. TESTIMONY OF W. J. (NAME TO BE WITHHELD), FORMERLY LIVED IN DNIPROPETROVSK, UKRAINE, NOW LIVING IN TORONTO, CANADA

In order to reduce national growth and development, mass deportations into the remotest parts of the U. S. S. R. and mass destruction in prisons have been a permanent policy of the Russian Communist Government toward the Ukrainians.

In the period following 1928–30, a purge was launched against wealthier farmers, tradesmen, and craftsmen who hired at least one person. The families were thrown out of their homes. Cold, hungry, in tattered clothes—most of them were deported under the worst conditions to concentration camps in Asia. People who had any valuables such as jewelry, and precious stones were tortured to give them up.

As evidence of mass destruction, was the mass grave in Vynnycia. Discovered in 1943 by the Germans, there were 10,000 bodies all with broken skulls—evidence of being shot to death. Mass arrests were made in 1937 and 1938 and the prisoners for the most part were murdered or deported with their families.

I witnessed unearthing of a mass grave in Stalino during the German occupation, who were Ukrainian prisoners slaughtered in Kharkiv prisons.

4. TERRITORY OF HRYHORY KYTASTY, BORN IN 1907, AT KOBYLAHY, POLTAVA, NOW LIVING IN DETROIT, MICH.

He testifies:

"In 1933, I was in Kiev where I witnessed hundred of people dying of starvation in the streets, particularly in the market places where they hoped to buy bread.

"Crowding the market places, stores, and bakeries, the large number of farmers coming to the city became a problem. The large number of corpses in the streets were increasing proportionately with the large influx. As a result, farmers and peasants were barred from entering the capital of Ukraine.

"The food for the city population was meager but they managed somehow. When they heard of the hunger and starvation in the nearby areas, naturally they hoarded all the food they could; the peasant and the farmer had to give up everything he had. As for the Army, the NKVD and other officials and

authorities—they had all the food they wanted and knew nothing of shortages. And for the surrounding areas of Ukraine—there was no famine in the non-Ukrainian territories."

5. TESTIMONY OF A. A. S. (NAME TO BE WITHHELD) FROM DNIPROPETROVSK, NOW LIVING IN NEW YORK

He testifies:

"In the area of Karaganda (Asia), there was a slave labor camp of 60,000 to 80,000 Ukrainians. I was one of the prisoners.

"In the mass grave of Ukrainians in Vynnycia, 10,000 of murdered Ukrainians were discovered by the Germans. Among them were my village fellowmen—Vasyl O'Krema, Maker Diachenko, and others. And last, but not least, —— ——, my father."

6. TESTIMONY OF DR. MICHAEL MISHCHENKO, FORMERLY OF KHARKIV, NOW SCIENTIST AND PHYSICIAN AT NEWBERRY, MICH.

The witness lived and worked at Kharkiv until 1943, and witnessed all crimes of the Russian Communist government. A permanent and systemmatical terror of Russian police was applied to Ukrainian people in order to reduce it in population and strength. Ukraine is a big cemetery of victims of the Bolshevist terror. Of Ukrainians that died in remote parts of U. S. S. R. in slave-labor camps—they are in the millions and can be added to the millions in Ukraine proper.

The famine in 1932–33 was a device of the Soviet Government to break resistance to collectivization. After all bread was taken by the Government, people ate cats, dogs, roots, straw. Enormous migration took place—people wandered to cities for bread, dying on their way. In some areas all the villages were dead.

In the spring of 1933, the witness was dispatched as a doctor by the Institute of Political Education to the county of Obolon (district of Kharkiv) to organize children's gardens. Obolon was dead. Corpses of men, women, and children lay inside the houses. The others were sick because they had eaten poisonous herbs and mushrooms. Those who survived were fed with turnips and sent to work (it was period of sowing). I had to organize children's gardens, but in one village I found only nine children, in the other, six. I was in the region for 1½ months (March 15 to May 1, 1933). During this time only one collective farm village went out in the field to work. They had managed to conceal some bread from the searchers.

Famine was the political weapon against Ukrainians. Proof: There was no famine in Russia proper (north). There was plenty of bread in Siberia. The Ukrainians were forbidden to leave the country in search for bread in Russia. Ukrainian farmers were barred from buying bread in the cities. The governmental and police organs were well fed. It was forbidden to talk about famine. There was not a word about the famine in the press, on the contrary, it wrote of the happy life of the Ukrainian people under the Soviet Communist government. Medical aid was barred from the dying people, and hospitals were ordered to refuse accepting starving people. Doctors did not dare to give famine as cause of deaths. No help was admitted from outside.

7. TESTIMONY OF JOSEPH PANASENKO, BORN IN 1889, IN POLTAVA, NOW LIVING IN HAMTRAMCK, MICH.

"In 1932, I was a member of he Ukrainian Bandura Choir which was sent by the Poltava Department of Political Education to the area of Romny to entertain dying farmers.

"The members of the choir and I saw in the roads leading to Romny many corpses of children, women, and men.

"As we entered the village of Nedrihailo, we were shocked by the fact that not even one human being was living to greet us. A group of us peered into a house and we saw two girls in rags lying in bed, dead. Near the stove, was their father also dead. Corpses were everywhere and it seemed that nobody was going to bury them."

8. TESTIMONY OF IVAN BORZENKO, BORN IN 1920, IN THE DISTRICT OF DNIPROPETROVSK, NOW LIVING IN ROCHESTER, N. Y.

"In 1932 and 1933, in the village where I lived, half of the population perished. * * * All corn was taken away. * * * A farmer by the name of Zadeka killed and ate his mother. Informers told the NKDV of this incident who came and arrested Zadeka. * * * No one ever saw him again.

"The crops in all of Ukraine were good and there was no reason for the famine. I was tractor operator and I saw the crops and they were plentiful.

"As a tractor operator, I received a half a pound of bread a day. * * * This I shared with my mother. * * * I was young and able to survive on my share. * * * My mother was older and what I shared with her was not enough to keep her alive."

9. TESTIMONY OF YOURI MATIASH, LIVED MOSTLY IN THE DISTRICT OF KHERSON, LIVES NOW IN DETROIT, MICH.

"In 1933, I was in Kiev. There I saw long lines of starving people at stores desperately trying to buy food. Others were lying in the streets, both dead and dying.

"In 1943, I visited my native village of Voronzivka. All acquaintances died during the horrible famine of 1933. (He gave a long list of names.)

"Near Fastiw, I knew of a woman who had four children and a cow. If she killed the cow, they may have survived. But the authorities forbade her to slaughter the cow. The result—yes, an old story to me—the mother and the four children, like thousands of others, perished."

10. TESTIMONY OF A. S. (NAME WITHHELD BY REQUEST), NOW LIVING IN SCRANTON

"In 1932, I was in the Red Army. In the spring of that year, 37 other Red Army men and myself were sent to Yahotyn to teach novices how to operate a tractor. In this capacity as a tractor operator, I saw the famine raging in several villages. I saw it in Chornucha where 200 out of 500 people died; I saw it Sonecha where 100 persons died; I saw it in Michailivka and Tarasivka (both in the Kharkov district) where about 10 to 20 inhabitants suvived in the two villages which had a combined population of about 600 people."

11. TESTIMONY OF LYDIA HORN, HALYNA PLECHINA, AND HANNA ZYWANOVA, ALL OF DETROIT, MICH.

All three testified that during the famine they lived in Dnipropetrovsk and would often come down to the village of Mohilov.

Everywhere they saw starving people.

One day they met a 5-year-old girl by the name of Fedosia Yablonowski.

She was running away from her mother who had already killed and eaten two other of her children.

12. TESTIMONY OF P. S. (DON'T PUBLISH NAME), FORMERLY OF DISTRICT OF POLTAVA, NOW LIVING IN FORT WILLIAM, CANADA

He testifies:

"I hardly survived the famine. In the spring of 1933 the people in my area and I were living on grass, roots, and leaves of trees; people ate everything including insects, dogs, cats.

"About 20 percent of the population died in my area. How the others survived is a miracle. Other areas were far worse than mine."

13. TESTIMONY OF MICHAEL LYSY, FORMERLY OF UKRAINE, NOW LIVING IN MINNEAPOLIS, MINN.

He testifies:

"In the fall of 1932 in the village where the witness lived, a special brigade of Communists was formed to confiscate all grains found among the farmers. They were assisted by police. They searched all homesteads and took away whatever food they found.

"The witness' native village lost about 150–170 persons from starvation. I saw people picking up grass, leaves, and roots for food of which they made a peculiar kind of bread.

"Severest losses were among the peasants who refused to join collective farmers. But those who had bowed to the Government pressure suffered too. The collective farmer Kondratenko in my village died of famine. The farmer Nichyporenko went to the next town, managed to buy a piece of bread, and died after having eaten it. The witness' two brothers died of starvation. A boy from the neighborhood, Kola, 5, died with all his family. Everywhere dying people were to be seen: Under the fences, in the streets, in the houses.

"How the population decreased due to the famine may be illustrated by the following example: In the village where I was a teacher, there were 170 births in 1926. In 1933 only 17 were born, of whom more than one-half died together with some 150 others. In 1941 the first grade of that school could not be opened because there were not enough children. The same was true with all 40 schools of that county."

14. Testimony of Stephan Fedorivsky, Formerly of Ukraine, Now of Island Creek, Md.

"The famine of Ukraine which caused so many deaths was organized by the Soviet Government.

"In 1932, the crops were good—and they were taken, leaving nothing for the peasant for food or planting. This was the way to break down the morale of the individual Ukrainian farmer and oblige him to 'voluntarily' enter into the collectivist farm program of the Bolsheviks.

"I witnessed many dying of starvation in many places. In the village Michailivka (District of Vynnycia), 600 persons died. This was in 1933 and not a single child was born in the village in that year. No children were born in the neighboring villages either—namely, Zhabelivka and Olenivka.

"In the village Stara Pryluka (District of Vynnycia), 867 persons were registered as officially dead. The given reason for the death was not 'starvation' but 'exhaustion.' Besides, 480 persons disappeared without being heard of—the reason, God knows. This information was given to me by the secretary of the village, Luka Petruk. In the same village, the Communist youth, Vasyl Lepetun, helped a Moscow commissioner in seizing grain from the farmers. His reward—death from starvation. And regarding the family of Talysh—a mother with a girl survived to tell how her husband and two other children died. The story she told was to the deceased husband's brother—a captain in the Red Army.

"In the village of Bryche, the same district had a population of 4,000. In the spring of 1933—a few dozen were left. Most of them died of starvation; others were deported. New, Russian inhabitants were brought by the authorities.

"In the year 1937–38 (after the trial of Tuchachevsky), thousands of Ukrainians were arrested, tortured, shot, or deported as 'enemies of the people.' Many mass graves were filled with Ukrainian farmers, workers, and intellectuals throughout the country. Some were discovered during the Nazi occupation of Ukraine (in the District of Vynnycia)."

15. Testimony of P. Honcharenko of Olshanycia, Kiev, Now Living in Detroit, Mich.

He testifies:

"During the collectivization of 1929 in the village of Lohwyn (District Bila Tserkva), 10 families were brutally dragged out of their homes. The houses were confiscated and other people were forbidden to shelter them. It was a bitter cold night with heavy snows. Overnight most of them died from exposure, and the survivors deported.

"In the summer of 1931, 30 farmers—among them my father—were arrested for reasons unknown. All of them perished in slave-labor camps in Siberia and Solovky."

BOLSHEVIK MISRULE IN UKRAINE

(By American Ukrainian Committee, Detroit, Mich.)

Ukraine Divided

With the overthrow of the Tsarist regime in Russia, and the disruption of the Austro-Hungarian Empire, the Ukrainians, a people of more than 40,000,000 were among those dispossessed nationalities who made their appearance on the stage of World War Europe. Like the Czechs, the Lithuanians, the Poles, and others, they claimed the right "to be masters on their own land." Bitter was

the struggle to retain this right. For a time it seemed that the hopes of centuries would be realized and that Ukraine, one of the largest countries of Europe, would become an independent state.

White armies, Red armies, Polish armies, Rumanians, Germans * * * Ukraine lay open to the ravages of war. The most fertile black-soil region in Europe, the "granary," the "bread basket" of the Continent, the coal and oil regions of Ukraine were a tempting morsel to the Tsarist as well as the Bolshevik leaders, to the Poles as well as the Germans. At the same time a falisfied, stupid propaganda that there are no Ukrainians, that "Ukranianism" is but a party, that the Ukrainians are Bolsheviks, that they are this and they are that * * * contributed to the postwar confusion and made the problem of building a new government and of retaining the independence of Ukraine a most difficult one.

With the Polish and Rumanian forces to the west, the Russian Bolshevik enemy to the north, the White armies to the south, ravaged by war, by internal confusion, Ukraine found herself defeated. The largest section of the territory, with a population of some 28,000,000 Ukranians, was annexed to Soviet Russia, a smaller part was taken by Poland, and still smaller parts came under the rule of Czechoslovakia and Rumania.

The Ukrainians failed to retain the lands on which their people constituted a vast majority. They failed to keep what rightfully belong to them.

Once again Ukraine was divided. * * *.

'RIGHT OF FREE SEPARATION"

The Russian Bolshevik government proclaimed its portion of Ukraine a "republic," it stuck up a label "self-governed" onto Ukraine, it built up a "union" of which Ukraine became one of the States. All this sounded rather promising. But in reality the "union" and the "republic" and the "self-governed" were among the fictions which powerful governments like to tack on to their dependent provinces to befuddle public opinion. Nobody asked the Ukrainian people whether they wanted to be united with Russia, and there was but little self-government in a country where power was centered in the hands of a small clique of men in Moscow. With the OGPU and the bayonets ever at the command of the bureaucracy of Soviet Russia, the dictators felt that there was no need to find out what the Ukrainian people thought about the "union."

There were times when Bolshevik leaders issued noble sounding phrases. There were times when the Bolsheviks spoke grandiloquently of the rights of the nations in Russia. It was at one of their numerous congresses that they resolved that "all nations included in Russia must have the right of free separation therefrom, and the right to form free and independent states. The denial of such right and the failure to take proper measures to guarantee its practical execution are equal to support of the policy of annexation and conquest."

Free separation. * * *

Independent states. * * *

By their own words of what a model state should do, the Russian experimenters have admitted that Ukraine is but an annexed province, for never during all these years have measures been taken by Russia to guarantee Ukraine the right to form a free and independent state and the right to separate from Moscow. During all these years, Red Russia, no less than Tsarist Russia before her, did all in her power to prevent the Ukrainian people from expressing themselves as to whether they desired to be free of the Soviets or whether they enjoyed their "union." To Red Russia as well as to Tsarist Russia before her there was but one Russia, undivided. * * * And the Bolsheviks as well as the Tsarists turned Ukraine into a colony to be exploited economically, to be oppressed nationally and politically.

It was Zinoviev, the Communist, who said of his country's relations toward the nationalities within her: "Russia has renounced the Tsarist policy of exploitation but we cannot do without the petroleum of Azerbaijan or the cotton of Turkestan (or the wheat of Ukraine). We take these products which are necessary for us, not as the former exploiter, but as older brothers bearing the torch of civilization."

And to this the author of the book from which the above is quoted (W. R. Batsell—Soviet Rule in Russia) adds this comment: "This statement was made before the Petrograd Soviet on September 17; the stenographic report does not mention laughter among those present."

FAMINE IN UKRAINE

Whatever the words of promise Russia may have uttered, today these words reveal themselves in all their emptiness.

Russia has become the exploiter, Ukraine the exploited. Russia, the conqueror, Ukraine, the conquered. To such an extent has this exploitation been carried out that today the "granary of Europe" finds itself without sufficient food to feed its people! There has been no hail nor storm nor drought to destroy the crops. But there have been, in the course of the years, "violent measures * * * practiced to extort the food from the countryside in order to feed the town population, the army and the GPU, and also to gain an export surplus necessary to supply the much needed 'valuta.'" (Dr. Hans Zörner, professor of farm management at the Agricultural College of Berlin.)

Ukraine has been robbed of her wheat until bread has become a luxury!

Ukraine is without food!

Ukraine has been passing through a famine!

Such news has been reaching us during the last few months. Letters written by the village people to their kinsmen abroad, news reports sent out by correspondents to the American, English, French, German, and other foreign newspapers, interviews given out by chance tourists into Ukraine, all have spoken of the sad plight in which the people of Ukraine find themselves. The Manchester Guardian, Le Matin, the Daily Express, Der Bund, the Fortnightly Review, Le Temps, the Detroit News, the Montreal Daily Herald, and many other newspapers and periodicals, have, at one time or another, offered their readers a picture of conditions which exist today in Ukraine of Russia. Some have written cautiously, others have been outspoken—that a famine has been raging in Soviet Ukraine, a famine like the one of 1921 and 1922.

Below we cite a few instances of what the newspapers have reported. In the Montreal Daily Herald, April 25, 1933, an article appeared, entitled, "Thousands Cry for Bread in Once Busy Ukrainian City."

Parts of it read:

"When I left Kharkoff it was the homeless boys who remained as the last and deepest impression. In the station waiting room 300 of them were herded to be taken away. * * * One of them near the window lay on the floor, his face red with fever and breathing heavily, with his mouth open. 'Typhus,' said another man, who was looking at them. Another lay in rags stretched on the ground, with part of his body uncovered, revealing dried-up flesh and thin arms. * * * These children are not the relics of the civil war. They are the homeless children of hunger, most of them turned out from their homes to fend for themselves because the peasants have no bread."

From a letter published in the Detroit News, September 2, 1933:

"Forgive me if my letter makes an unpleasant impression. It cannot be helped. Our dear native Ukrainia is now sad and gloomy, and life there is hungry and naked * * *. In our village there is complete starvation * * * We ate up all that could be eaten—cattle, dogs, and cats * * *. People fall like flies in autumn * * * Here is an example for you: The street in which you were born and raised is empty. Your brother, Dmitry, is dead. * * * For example, those three men who came back from America, Afanasy, Danchuk, and Prokhvor, all died of hunger * * * The few party members (Communists) among us manage to live * * * I am afraid. I am sending this from another village. Should they find out who wrote it, I would be thrown in jail. * * *"

From the New York Times, August 29, 1933:

"Two American citizens * * * have given to the newspaper, Le Matin, an account of a visit which they have just made to their native villages in the Ukraine. * * * When they arrived at Kiev they said they were horror stricken by the appearance of the people. Everybody, they said, seemed to be suffering from swollen legs and to be crippled. * * * They found, too, that food and money that they had sent to relatives never had been delivered during the past year. In the village from which the woman came she found that her mother and brothers had already died from what was described as starvation. * * * 'We're all dying of starvation,' one of the villagers said. When the American woman protested that surely the authorities must do something the reply she got was: 'It is they who are killing us. They want us to die. It is an organized famine. There never has been a better harvest, but if we were caught cutting a few ears of corn, we would be shot or put in prison and starved to death.' When the woman visited friends that evening she was warned not to leave their house again, and

a hint was given that there was danger of her being killed by people driven to cannibalism."

From a letter to the Manchester Guardian, September 13, 1933:

"A person left Ukraine on June 28 and crossed the Polish-Soviet border on July 31, 1933. His statement was made in the presence of two witnesses. It appeared in full in Dilo, Lviv, August 23. He was one of the officials in a Radhosp (state farm). He did not run away but was allowed to go abroad on the application of his children who were living abroad (that is, they bought him out). He stated that starvation started in 1932, when the Government took away from the peasants all the grain. * * * He gave the following statistical data from the department of Kalinovka concerning the depopulation of the countryside. Comparing the population with that in 1932, the village of Zalyvanchyna had, in 1932, a population of 3,500, but about 2,000 were now dead. The village of Nemerynci had, in 1932, a population of 700, but in June of this year only four or five families remained. In the village of Kumanivka, out of about 3,000, only 1,900 remain. In the village of Monchynci, out of 1,800, only 1,300 remain In the department of Koziatyn the same state of affairs is to be found. * * *"

The Soviet Government has denied that there is a famine in Ukraine. And with this denial orders were given that foreign correspondents will not be permitted to go into Ukraine without a special permit. A denial and yet a confession. Why should newspaper men be forbidden to see Ukraine if all is well in the "granary" of Europe?

At the same time, prominent personages have been invited to visit Soviet Russia. Feted and eulogizer, guided about by men experienced in the art of guiding, being shown what Moscow wishes them to see, and having no opportunity to see those things which Moscow does not wish them to see—they have returned from Russia and Ukraine, and have repeated after the Soviet officials that they had not seen any famine in Ukraine. They are 54,770 villages in Soviet Ukraine. * * * Might not a visitor with a Bolshevik guide escape seeing the famine villages?

We are reminded of the years 1921–22, when Russia was experiencing one of the most horrible famines in history. The years when the whole world responded to the appeals of starving men and sent aid to the famine regions. The years when the American Relief Administration undertook to bring aid to those in need in the land of the Soviets, regardless of whether the hungry lived on the Volga or on the Dnieper.

Yet, what was the attitude of Russia toward Ukraine in those days? Did the Bolshevik leaders admit that Ukraine was in need of food? Did the Moscow dictators admit that there was a famine in Ukraine?

Just as today, the Soviet leaders insisted that Ukraine was in no need of aid. As today, they denied that there was lack of food in Ukraine. And they assured the American Relief representatives that all is well in the "black soil" region of Europe.

In his book, Famine in Soviet Russia, Prof. H. H. Fisher, one of the representatives of the American Relief Administration, writes:

"First, upon the request for a permission to visit the Ukraine, came a letter from Eiduk (November 16, 1921), stating that Hutchinson and Golder could not be permitted to make the investigation, since the gubernias of Kiev, Volhynia, Chernigov, Podolia, and Poltava were not famine gubernias, but, on the contrary, had produced a surplus, part of which had been exported to support the central provinces of Russia. Moreover, the Government could not understand why the American Relief Administration should send any of its men to places where there was no starving."

And in a footnote to that chapter, Famine in the Ukraine, we find the following words: "Chicherin's note of August 3, 1921, to all governments did not list Ukrainian gubernias among the 'distressed'."

Today we know that the number of starving pople in Ukraine reached up to 3,000,000. And yet the Bolshevik leaders denied that there was famine in Ukraine in those years, as they have denied that there is any distress in Ukraine today.

To quote again from Professor Fisher's book:

"From the first the Moscow government had discouraged all proposals which tended to bring the American Relief Administration into contact with the Ukraine. * * * The Communist Party's Ukrainian famine policy is difficult to explain. * * *"

And speaking of the focusing of all relief efforts on the Russian districts, the author writes:

"* * * making the situation in the Ukraine even worse by removing some of the food that the famine districts had produced and needed. One cannot escape the feeling that fear or political expediency, or both, influenced the official famine policy in those regions. * * *"

Such are the words of an impartial observer, of a man who was not directly interested in the political situation existing between Russia and Ukraine, a man who came to feed the hungry, whether they lived in the districts of Moscow or in the Kiev and Kharkov districts.

Moscow's denial that there is starvation in Ukraine today has prompted a French newspaper to write that, in view of the fact that contradictory statements come from Ukraine, since, on the one hand, news of a famine continues to get across the Soviet border, and, on the other hand, Moscow denies that there is any famine, it is advisable that an international commission be appointed to go to Ukraine and investigate the conditions there.

SUICIDES OF SKRIPNIK, KHVILOVY

Forced collectivization, coercive grain collections, and, in their wake, famine. Taking food away from the Ukrainian by force and leaving him to starve.

It was Mr. Mirsky who wrote in his Russia, a Social History:

"The rural commune as it developed in Great Russia never established itself among the Ukrainians, except where there was direct Great Russian influence. The Ukrainian village community (hromada) was a looser and freer form of organization. There was room for more individualism inside it and its collectivism was less coercive."

The dictatorial, coercive methods employed by the Russian Bolsheviks were hateful to the Ukrainian people. Nowhere was there so much resistance to forcible grain collection as in the Ukrainian villages. Moscow, however, soon found means to terrorize the "insurgents." Whole villages were forcibly deported into remote sections of Russia. It is said that in recent time, 2,500 such village communities were driven out of Ukraine.

At the same time a veritable reign of terror was being carried out against all those who raised a voice of protest in behalf of the Ukrainian peasant. Their Ukrainian nationality became a mark of opprobrium in the eyes of the Soviet leaders.

Skripnik, Khvilovy, Shumsky, Hrushevsky, Diatliw, Rudnitsky * * * the names run into hundreds. Ukraine's foremost men were branded as "sabotagists," "antirevolutionists," "Fascists," and made to suffer consequently.

Nicholas Skripnik, once a friend of Lenin, a member of the Central Executive Committee of the Communist Party, a man whom a foreign newspaper described as "naively believing the Bolshevik Party," seeing to what a crisis the Bolshevik rule has brought Ukraine, despairing of the outcome, committed suicide. It was Le Temps that called Skripnik a victim of the struggle between Russian Chauvinism and Ukrainian nationalism. And the London Times, commenting on the suicide of this prominent Ukrainian, called attention to the conflict which arose between Moscow and Skripnik with regard to the agricultural policy in Ukraine.

Nicholas Khvilovy, the brilliant Ukrainian writer, also a former stanch Communist, witnessing the tragedy brought about by those with whom he had once been in sympathy, committed suicide.

Many Ukrainians were imprisoned, many were exiled, many were executed. Michael Hrushevsky, the noted Ukrainian historian and former head of the Ukrainian Central Rada, was exiled to Russia several years ago because he, too, was labeled a "nationalist." His countrymen never knew where he lived during those years of exile. It is only recently, quite by chance, that they learned that Professor Hrushevsky lost his eyesight, and that the probable cause of his blindness is scurvy, that disease brought about by poor and inadequate food.

Stephen Rudnitsky, geographer and historian; Michael Lozinsky, the publicist; Peter Diatliw, the founder of the Ukrainian Communist Party; Shumsky, a former commissar; Professor Tchaikovsky, are only a few among those who have been imprisoned. Osip Bukshovany, Laptchinsky, Konar, one-time defenders of communism in Ukraine, are said to have been put to death by the Russian Government.

At times the Bolshevik methods of suppressing ideas which do not coincide with their own reach the absurd. The works of the Ukrainian poet, Shevtchenko, have been tampered with to conform with what a Bolshevik thinks a poet should write.

The Ukrainian Academy of Science ousted several scholars—Kondrat, Levitsky, Rudtchenko and others—because they are "nationalists." A number of professors have been expelled recently from the Ukrainian Agricultural Academy because, according to Bolshevik dictators, they were not sufficiently enthusiastic about the results of the Bolshevik experiment.

The work on the Ukrainian dictionary has been suspended because the compilers were accused of being antirevolutionary. A committee was organized to "cleanse the dictionary of nationalist dirt." This "dirt," this antirevolutionary work, consisted of putting into the dictionary Ukrainian equivalents, in addition to the international words.

For many years most of these people believed that Moscow meant well. How well Moscow meant is evidenced today by the hundreds of deserted Ukrainian villages, by the thousands of Ukrainians exiled to penal camps, by the suicides of men who believed, by the hungry and ragged in the "granary" of Europe, in the region of which Professor Rugg, in his Textbook in World Geography, writes: "There was not a region in the world before the war which produced more wheat than this one—neither our own central wheat belt nor the vast wheat plains of Argentina."

THE VOICE OF UKRAINIANS

It sounds almost too naive to warrant notice, it seems almost improbable, but to all appearances Russia is bent on a plan of her own, not unlike that of the Tsarist regime with regard to Ukraine. It will be exactly 15 years on November 2 that the Soviet Government issued a declaration of the rights of nationalities in Russia. The second point of this declaration states that a nationality has the right of free determination "up to complete independence." The grim humor of this is evident when the least word of protest against the Russian Bolshevik abuses in Ukraine brings about arrests, exiles, executions, suicides. * * * Today there is every indication that the imperialism of Russia has merely changed colors. And the world and his wife continue to think of Russia in terms of "one and undivided."

A Ukrainian peasant spoke to a foreign newspaper man about Russia's attitude toward Ukraine:

"The Russians are determined to destroy the Ukrainains as a separate people. This famine is a planned and organized famine. We are an agricultural people (over 80 percent Ukrainians are peasants), and their forced collectivization and their robbing us of our food, deporting whole villages into far away places—all this aims to put an end to Ukraine, to kill all thought of Ukrainians as a nation separate from the Russians. The Tsars have tried it and they failed. So will the Bolsheviks fail."

And the following is the voice of the Ukrainian Socialist parties in western Ukraine and abroad. In their appeal to the Socialists of the world they have said:

"* * * We, the Ukrainian Socialists, protest before the entire world against the barbaric annihilation of the Ukrainian working masses. We protest against the suppression of the rights which the Ukrainian workers have gained for themselves in the course of many years of revolutionary struggle. We protest against the execution, against the imprisonments and oppressions of our people. We demand amnesty for all political prisoners and we call you, comrades to join us in our protest. * * * Comrades, protest against the exporting of food products from Soviet Ukraine when the people of that country are starving. * * * Condemn the policy of an organized terror which the Russian Communist Party is carrying out in Soviet Ukraine."

A group of 35 Ukrainian organizations of western Ukraine, including the Ukrainian parliamentary representation, issued an appeal to their countrymen in all lands:

"* * * Ukrainian people, you must speak up courageously and reveal before the whole world the tragedy which has befallen your countrymen in Soviet Ukraine. You must do everything possible to save the endangered existence of millions of your brothers in order that you may save yourself, your national existence, from annihilation. * * *"

The Ukrainian Catholic espiscopates of Galicia issued an appeal to "everybody who believes in God, and especially all workers and peasants, and above all, our compatriots, to join us in our protest and carry it to the remotest countries of the globe. * * * Ukraine is in the clutches of death. Her population is dying of starvation. * * *"

Prof. O. I. Bochkovsky, a noted Ukrainian scholar, wrote a letter to former French Premier Herriot who returned from Russia with news that he saw no famine in Ukraine. Professor Bochkovsky calls Mr. Herriot's attention to the fact that under the guidance of Bolshevik leaders it would be impossible for him to see Ukraine as it is today.

"To hear the true voices of the Ukrainian people," he writes, "you would have to travel through Ukraine and see the dying-out villages. You would have to visit the Solovky and other places of exile of the Soviet Government. You would have to see the prisons and underground dungeons of the GPU. * * * You would have to see the cemeteries, the dugouts, where thousands of Ukrainian intelligentsia, peasants, and workers have been buried after they had been shot down by the Bolsheviks. * * * There can be no two thoughts that in this struggle between Russia and Ukraine, the sympathies of the civilized world must be on the side of Ukraine, the oppressed, and not on the side of Moscow. I cannot conceive the idea," Professor Bochkovsky ends his letter to Mr. Herriot, "that the friend and builder of a new Europe should wish to be even a chance associate of Moscow in her program of Ukraine."

A former Ukrainian Communist, Stephen Volinetz, recently published a booklet in which he gives reasons why he left the Bolshevik Party and reveals to the public the policy of Russia in Ukraine. He, too, speaks of exploitation and the evident continuation of the imperialistic ideas of old with regard to Ukraine.

Ukrainians everywhere, with the exception of the few who cling to bolshevism and those who live in the Soviets under the watchful eye of the GPU, have issued protests against the Russian Bolshevik rule as it is being carried out today in Soviet Ukraine. To them the story of Russian dictatorship is clear. As clear as the story of those days when their countrymen were "pacified" by Polish officialdom, as clear as the story of the dispossessed and oppressed in any country where "might makes right," where "the end justifies the means," where dictatorship and not the will of the people holds sway.

News may come that there is no famine in Ukraine just now, news may reach us that there has been an exceptionally good harvest there, but so long as Russia considers Ukraine as her colony, so long as she is free to rob the people of their food products, there will be famines in Ukraine.

So long as there is no national and political freedom in Ukraine, distress and suffering will follow.

It was Voltaire who said: "Ukraine has always aspired to be free."

Neither Tsarist, Bolshevik, Polish, or any other rule has put an end to our aspirations.

MARIE S. GAMBAL.

OCTOBER 1933.

EYEWITNESSES

Mr. BATIUK. These are the names: Serhi Fursa, Detroit, Mich.; Vasyl Futala, New York City; Walerian Jakubovich, Toronto, Canada; Hryhory Kytasty, Detroit, Mich.; Dr. Michael Mischenko, Newberry, Mich.; Joseph Panasenko, Hamtramck, Mich.; Ivan Borzenko, Rochester, N. Y.; Youri Matiash, Detroit, Mich.; A. S. ——, Scranton, Pa.; Lydia Horn, Detroit, Mich.; Halyna Plechina, Detroit, Mich.; Hanna Zywanova, Detroit, Mich.; Michael Lysy, Minneapolis, Minn.; Stephen Fedorivsky, Island Creek, Md.; P. Honcharenko, Detroit, Mich.

In addition, attention is called to the following:

The appeal of the Ukrainian Greek Catholic bishops of western Ukraine. On July 24, 1933, these bishops appealed for aid for the starving people in Soviet Ukraine; the appeal of Cardinal Innitzer of Vienna, who in August of 1933 urged aid for these same unfortunate Ukrainians; the reports of Dr. Ewald Ameda, general secretary of the Congress of European Minorities, August 1933.

APPEAL TO THE LEAGUE OF NATIONS, SEPTEMBER 29, 1933

The meeting of the Council of the League of Nations in Geneva, September 29, 1933: At this meeting, its president, the Premier of Norway, Dr. Mowinckel, raised the question of aiding the starving people of the Ukraine. The Council decided to refer the matter to the International Red Cross in Geneva; the Bolshevik Misrule in Ukraine, published by the American Ukranian Committee in Detroit, Mich., by Marie Gambal, October 1933.

FAMINE OF 1932–33 PLANNED AND ORGANIZED

The famine of 1932–33 in the Ukraine was not a matter of chance. It must be borne in mind that this famine was planned and organized to break down all vestiges of Ukrainian resistance toward Soviet policies in the Ukraine. When the Ukrainian peasants and farmers refused to become collectivized, the Communists arrested, imprisoned, executed, and deported them to break their resistance, and at that time it was estimated they put into the labor camps approximately 2,000,000 people. And to add fuel to the fire, hunger was added as a weapon of terror in the form of a large famine. It is interesting to see what the Soviet authorities did when this famine was raging over wide areas over a fertile and opulent country.

EXECUTION OF THE PLAN

In January of 1933, the Central Committee of the Communist Party—after many denials about the existing famine—issued a statement that the existing party organizations in Ukraine did not carry out orders with regard to the delivery of grain quotas. As a result, 17,000 party officials under Paul Postishev were sent from Moscow to collect, at all cost, the allotted quota. This was already at a time when millions of Ukrainians were starving and dying. And while millions were dying of starvation, when entire areas such as Sukhary, Ovsuiky, Rudky, Berezolovo in the Kiev district, the Poltava district, and the Odessa district—when all of these were being desolated by hunger—yes, Ukrainian wheat was being sold on wheat market in Hamburg, Germany. As if to add salt to a painful wound, in commenting on the situation in dying Ukraine, President of the U. S. S. R. Kalinin said the following in 1934 at the congress of the Communist Party:

The collective farmers have passed through a good school this year. For some, this school was quite ruthless.

SILENCE OF THE SOVIET PRESS

During the famine of 1932–33, the Soviet press remained mysteriously silent about the widespread hunger and mass starvation, and the Soviet Government organized no help to relieve the millions of dying people. Moscow would not even allow representatives of foreign relief agencies to come in with aid. Even the International Red Cross was refused entry. Moscow did everything to prevent news from spreading abroad.

NEW WAVE OF REPRESSION AFTER THE FAMINE

Immediately after the famine of 1932–33, a new wave of repressions began in 1934. With the assassination of Kirov in Stalingrad during the so-called Chystka of 1936–37, another one of those purges took place in the Ukraine to cleanse that country of anti-Communist and national elements. It is estimated that about 2,000,000 persons were deported to slave labor camps while thousands were executed.

Some insight into the situation may be obtained from a statement in the May 1938, issue of the newspaper Communist, which said that 20,000 schools in the Soviet Ukraine are now without teachers. Nor did these mass exterminations cease with World War II. In Vynnycia, Kiev district, in this town alone a grave was found with 10,000 bodies. Similar grim incidents occurred in Lwiw, Kiev, Kharkiv, Stainislaviv, and throughout the many villages to numerous to mention.

DROP IN POPULATION

The facts and figures as I have listed are but few of the many cited by American and European correspondents of the statements made by eyewitnesses and the Bolshevik sources, and I might cite again as to the statistical data by Mr. Dobrriansky as to the population in the Ukraine. As to the population in the Ukraine, made by the census in 1926 and in 1929, those figures show that the Ukraine, though they gained 1,000,000 general population, lost close to 10,000,000 people, and in the place of those who were put in the slave labor camps and those who died, they brought the people from Russia and other places, and that can be found in the book published in 1947, 800 Years of Moscow in Chapter 11.

Now they prove that the Communist policy, stemming from Moscow, was according to a plan. The mass arrests, the executions, the millions in slave-labor camps, the decrees that resulted in famines, the deaths of millions—all of this was aimed to frustrate the natural growth of the Ukrainian people. Having achieved this within the borders of their own state, it would be easier to intensify aggressive drives against other peoples, both near and far. A world empire, patterned after a Communist dictatorship, is no doubt the ultimate aim.

As American citizens of Ukrainian descent, we submit these facts to this committee and urge you to use your influence in the Senate as favoring the ratification of the Genocide Convention and making genocide a punishable crime. We are of the opinion that if this were passed, it will be a forward step to a better and freer democratic world for which the young Ukraine people paid so much in blood and suffering.

Senator McMahon. Thank you very much.

Now we have Mr. David Whatley. Mr. Whatley made no formal application, but he has requested a few minutes, and I am glad to hear from you, Mr. Whatley.

STATEMENT OF DAVID WHATLEY, MEMBER OF THE DISTRICT OF COLUMBIA BAR

Mr. WHATLEY. I appreciate your time, Mr. Chairman. I am not an expert on this question nor on international law, but as a humanitarian, I unreservedly endorse the ratification of the convention. The arguments in favor of its ratification have so ably been made by the proponents I shall not repeat them. I would, however, like to suggest that in your report to the Senate on resolution of ratification, you make it clear that this convention does not seek to set a precedent, as is maintained by that branch of the American Bar Association that is in opposition to the treaty, with regard to amend our Constitution by the treaty-making process. The decisions on that question of the scope and limitations of the treaty power under the Constitution have been quite vague, and in many cases—some of those included in Mr. Perlman's excellent presentation—the dissenting opinion have been more persuasive, in my view, than the majority decisions. That, undoubtedly, is a very grave danger, and the report of your good committee, I am sure, will make it plain that no such intent can be found in the proposed treaty in its presentation to the Senate, or in the resolution of ratification.

I should feel remiss in my duty as a citizen, Mr. Chairman, in not using this brief time to amplify in modified form the thesis that Mr. Finucane sought to make in the first part of his presentation this morning that the terms of the convention can certainly not be interpreted to preclude the inclusion of the crime of mass murder of civilians by area bombing in warfare, that we have accepted as almost conventional and respectable these past few years, and that the moral issues involved in this question, I submit, outweigh the moral issues to which the convention is primarily addressed. I devoutly hope that your committee will recommend to the Senate that in its resolution of ratification, that it is the understanding of the Senate that such crimes against humanity, such as the strategic bombing of whole cities of civilians, are included in the terms of the convention categorically, and that whatever has been our practice in the past, that it is our firm resolve that we shall not resort to such inhuman tactics hereafter except in the extremity of the necessity to retaliate against a power using these weapons of mass destruction against our own country, where our very national existence is endangered.

MORAL ASPECTS

There have been many discussions particularly in the last year on the moral aspects of strategic bombing. One of the most pertinent, both from the moral aspect and the military aspect, was that made by Admiral Oftsie in the hearings before the House Committee on Armed Services last year.

Senator MCMAHON. The admiral held the quaint idea that it was all right to starve them to death by a naval blockade but it wasn't so good if you hit them over the head. Wasn't that his thesis?

Mr. WHATLEY. No, sir; the admiral didn't make any statement that could be interpreted, I believe, in that way, Senator.

Senator MCMAHON. As an admiral in the Navy—the Navy believes in the strategic use of the blockade, which, of course, if maintained

tightly and if successful, results in the starvation of the population blockaded.

Mr. WHATLEY. Well, I would certainly agree that one is as reprehensible as the other.

Senator MCMAHON. But the admiral didn't think so.

Mr. WHATLEY. I believe he didn't touch on that point.

Senator MCMAHON. Well, Mr. Whatley, I thank you very much. I think you have made your point.

Mr. WHATLEY. I would like permission just to include a few brief statements on this issue and express the hope that your committee might study them, particularly in the light of the great peril that hovers over all our lives at the present time.

Senator MCMAHON. All right, mark them out for the stenographer.

Mr. Clerk, does this complete the people who have requested to be called?

Mr. O'DAY. That is correct, sir.

Senator MCMAHON. Is there anyone else, who wishes to be heard? If not, the hearings are declared officially closed, and the meeting of the subcommittee on the question will be held in executive session, at a later date to be announced by me.

(Whereupon, at 4 p. m., Thursday, February 9, 1950, the Subcommittee on Genocide officially closed its hearings.)

(The following matter was presented for the record during the morning session of January 23:)

UNITED STATES COMMITTEE FOR A
UNITED NATIONS GENOCIDE COVENTION,
New York 16, N. Y., January 4, 1950.

STATEMENT TO SUBCOMMITTEE OF THE UNITED STATES SENATE COMMITTEE ON FOREIGN RELATIONS (SENATORS BRIEN MCMAHON (CHAIRMAN), BOURKE B. HICKENLOOPER, HENRY CABOT LODGE, JR., CLAUDE D. PEPPER, ELBERT D. THOMAS)

Early in 1948 this committee was formed in aid of the efforts of our Government to promote adoption of the Genocide Convention. In September 1948, our committee filed with the General Assembly of the United Nations the petitions of 166 organizations gathered by us from 28 nations representing over 200,000,000 people—a tenth of the world's population—asking for adoption of the convention at Paris.

On December 9, 1948, largely through United States leadership, the convention was unanimously adopted by the United Nations General Assembly. Such was the power of world opinion that even the Soviet bloc, which had to the last moment opposed, voted for the convention. This unanimity was due to the notable efforts of President Truman, Secretary Marshall, United Nations Delegates Warren R. Austin, John Foster Dulles, Ernest A. Gross, Willard Thorp, and their colleagues, and to widespread support by our own country's leaders in American life, particularly the fields of law, labor, education, and religion. There is no subject on which there have been more unified efforts of Catholics, Protestants, and Jews than in this great cause.

Following adoption of the convention, 43 nations have signed the convention. Noting that legal objections have been raised in this country against ratification, we have requested eminent members of the bar to give us counsel and to act as our legal advisory committee. We respectfully ask that spokesmen for our committee and its legal advisers be heard. They will clearly demonstrate that ratification of the convention is fully in accord with our traditions, our Constitution, and our laws.

In the war of ideas which engulfs the world, the adoption of the convention was an historic victory for American foreign policy and for world peace. The nations of the world await action by the Senate of the United States.

The world has seen only too plainly that genocide, the mass destruction of entire groups of the human family, is not only the most heinous of crimes, not only creates world displacements by driving hapless refugees into every corner of the globe, but is one of the acts leading to war. "Governments," as Secretary Marshall declared on September 28, 1948, in Paris, while speaking in support of the Genocide Convention, "which systematically disregard the rights of their own people * * * are likely to seek their objectives by coercion and force in the international field." That genocide is an international crime cannot be doubted.

After World War I, we refused to enter the League of Nations, believed that two oceans and the Kellogg-Briand Pact guarded us from war. We have learned our error. The question of ratification of the Genocide Convention reaches to the very roots of the policy of our Government toward the nations of the world. Failure to ratify would mean tragic errors similiar to those into which our country fell after World War I.

Genocide, unanimously declared by the nations of the world to be an international crime, is in fact one of the most sinister threats to world peace. The mass destruction of entire groups of the human family differs in its nature fundamentally from homicide. It is only with mass action against peace that genocide deals. The events which led to World War II leave no room for doubt on this score. This international crime as definied in the convention is committed only when aimed at destruction of national, ethnical, racial, or religious groups as such. It is punishable only in the country where it occurs. It will be punishable in our own country only if there be an act of Congress to such effect.

We respectfully urge that the Genocide Convention be ratified.

Sincerely yours,

UNITED STATES COMMITTEE FOR A UNITED NATIONS GENOCIDE CONVENTION,
By WILLARD JOHNSON, *General Secretary.*

Cochairmen:
- Samuel McCrea Cavert, Federal Council of Churches of Christ.
- Thomas H. Mahoney, Catholic Association for International Peace.
- James N. Rosenberg, Chairman, Human Rights Committee, National Conference of Christians and Jews.

Vice chairman:
- Clark M. Eichelberger, American Association for United Nations.
- Henry Noble MacCracken.

Benjamin Abrams.
Henry A. Atkinson, World Alliance for International Friendship Through Religion.
Roger N. Baldwin, International League for the Rights of Man.
Mildred Burgess, Women's International League for Peace and Freedom.
Rev. Father Edward V. Cardinal, Bishop Sheil School of Social Studies.
James B. Carey, CIO.
Everett R. Clinchy, National Conference of Christians and Jews.
Frederick C. McKee, American Association for United Nations.
Clarence Pickett, American Friends Service Committee.
Raymond S. Rubinow.
Catherine Schaefer (alternate), National Catholic Welfare Conference.
George N. Shuster, Hunter College.
Mrs. William Dick Sporborg, General Federation of Women's Clubs National Council of Women, U. S. A.
Matthew Woll, American Federation of Labor.
(Organizations listed for identification only.)

Legal advisory committee:
- Robert P. Patterson, Chairman
- A. A. Berle, Jr.
- Louis Caplan
- Oscar Cox
- Charles P. Curtis
- William J. Donovan
- Allen W. Dulles
- Charles Fahy
- Murray I. Gurfein
- Jeremiah T. Mahoney
- Joseph M. Proskauer
- Wesley A. Sturges
- Harrison Tweed

Some of the American organizations supporting Genocide Convention:

American Federation of Labor
American Jewish Committee
American Legion
American Veterans' Committee
Amvets
Bar Association of the City of New York
B'nai B'rith
Catholic Association for International Peace
Congress of Industrial Organizations
Federal Council of Churches of Christ
General Federation of Women's Clubs
Hadassah
Loyal Order of Moose
National Association for the Advancement of Colored People
National Conference of Christians and Jews
National Council of Catholic Women
National Council of Women
National Federation of Business and Professional Women's Clubs
Salvation Army
Synagogue Council of America
United Council of Church Women
Women's International League for Peace and Freedom
and others.

DECEMBER 23, 1949.

Hon. BRIEN MCMAHON,
United States Senate, Washington, D. C.

MY DEAR SENATOR MCMAHON: I wish to join the many people in this country who support the ratification of the Genocide Convention.

The resolution adopted by the General Assembly of the United Nations in 1946 properly pointed out that the crime of genocide shocks the conscience of mankind, results in great losses to humanity, and is contrary to moral law and to the spirit and aims of the United Nations.

It is not conceivable that anyone in this country or any country in the world can justify the commission of the crime of genocide. The commission of acts designed to destroy, in whole or in part, a national, ethnical, racial, or religious group is condemned by the civilized world.

It is not sufficient, however, to condemn acts of genocide and then to stand idly by. We must do more than that. We must join with the other members of the United Nations and ratify the Genocide Convention in order that this moral crime will become a legal crime as well.

The General Assembly of the United Nations has properly pointed out that the punishment of the crime of genocide is a matter of international concern. I was greatly honored to have had the privilege of serving as chairman of the American delegation to the General Assembly which completed and adopted the Genocide Convention. At the opening session of that General Assembly in Paris in 1948, I pointed out that the "systematic and deliberate denials of basic human rights lie at the root of most of our troubles and threaten the work of the United Nations." Events of the past year have only served to underscore those words.

On the basis of my experience, I am convinced that unless governments and people are prepared to respect the dignity and integrity of the individual, we will not be able to achieve that peace and stability in the world which we are seeking. The ratification of the Charter of the United Nations by 59 nations has been an important step. But the United Nations cannot achieve its objectives unless its members are prepared to support its recommendations. This country as well as other countries is free to ratify or not to ratify the Genocide Convention, just as we were free to ratify or not to ratify the Charter of the United Nations. However, unless the United States and the other members of the United Nations are willing to undertake additional legal obligations for the promotion of respect for human rights and the other objectives of that Organization, we will fail to move ahead toward peace and stability.

The United States was at the forefront in its leadership in the United Nations in the development of the Genocide Convention just as we are in a position of leadership in the United Nations on other aspects of the human-rights program of that Organization. It is not enough for this country to lead on the field of battle and to provide arms and financial assistance to other freedom-loving countries. Leadership in principles of justice and morality is indispensable and can be maintained only if we are willing to undertake legal obligations with respect to such treaties as the Genocide Convention. We cannot afford to lose our moral leadership in the United Nations.

The United States should ratify the Genocide Convention to help bring this convention into force to outline the heinous crime of genocide.

Faithfully yours,

GEORGE C. MARSHALL.

THE FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA, INC.
New York, N. Y., May 18, 1949.

Rev. WILLARD JOHNSON,
New York, N. Y.

MY DEAR WILLARD: I am enclosing herewith a copy of the resolution on genocide which was approved by the executive committee of the Federal Council on May 17, 1949.

I have submitted a copy of this resolution to the Secretary of State. I have sent copies to the social action secretaries of the various communions urging them to communicate with the State Department requesting early submission of the convention to the Senate.

Cordially yours,

WALTER, *Secretary.*

RESOLUTION, ON GENOCIDE, ADOPTED BY THE EXECUTIVE COMMITTEE OF THE FEDERAL COUNCIL, MAY 17, 1949

The Federal Council of the Churches of Christ in America rejoices in the adoption by the General Assembly of the United Nations of the Convention on Prevention and Punishment of the Crime of Genocide. In this action the United Nations has sought to place the deliberate and systematic destruction of national, ethnic, religious, and racial groups under the ban of international law.

We believe the convention outlawing genocide is in accord with the Christian conception of the dignity and worth of men as children of the Heavenly Father, and marks a significant advance of international law where it is much needed to protect religious, national, and racial groups from destruction.

We request the State Department promptly to submit and the Senate immediately to ratify this convention and by such action to hasten the day when genocide will fall under the legal as well as the moral condemnation of the civilized world.

THE AMERICAN LEGION,
NATIONAL HEADQUARTERS,
OFFICE OF THE NATIONAL ADJUTANT,
Indianapolis 6, Ind., January 10, 1950.

Mr. SAMUEL MCCREA CAVERT,
United States Committee for a United Nations Genocide Convention,
New York 16, N. Y.

DEAR SIR: In response to your letter of January 6, please be advised that the name of the American Legion may be included with others as endorsers of the United Nations Genocide Convention.

At our recent Philadelphia national convention the delegates assembled approved in principle Resolution No. 309 and Resolution No. 571, and referred them to the legislative commission for further study. The resolving clause is as follows:

"Therefore be it

"*Resolved by the Thirty-first National Convention of the American Legion in convention assembled at Philadelphia, Pa. August 29, 30, 31 and September 1, 1949,* That this organization go on record as favoring ratification by the United States of the convention on the prevention and punishment of the crime of genocide; and be it further

"*Resolved* That the members of the United States Senate of our State be urged to do all in their power to accomplish ratification of said convention as promptly as possible."

As per your request, copies of this letter are being sent to the names you listed.

Sincerely yours,

WM. E. SAYER, *Assistant National Adjutant.*

(Copies for Hon. Brien McMahon, Hon. Elbert D. Thomas, Hon. Bourke B. Hickenlooper, Hon. Claude D. Pepper, Hon. Henry Cabot Lodge, Jr., Col. George Mingle, Mr. E. W. Sherwood.)

RESOLUTIONS OF THE NOVEMBER 1948 ASSEMBLY OF THE UNITED COUNCIL OF CHURCH WOMEN

JOINT RESOLUTIONS FROM DEPARTMENTS OF CHRISTIAN WORLD RELATIONS AND CHRISTIAN SOCIAL RELATIONS

[Excerpt]

* * * * * * *

Genocide

The United Council of Church Women reaffirms its support of a strong international law against the crime of genocide—the mass extinction of any people because of race, creed, or political beliefs—and urges the U. S. A. delegation to the UN to insist on its adoption.

* * * * * * *

GENERAL FEDERATION OF WOMEN'S CLUBS,
Washington, D. C., December 30, 1949.

Mr. WILLARD JOHNSON,
General Secretary, United States Committee for a United Nations Genocide Convention, New York 16, N. Y.

DEAR MR. JOHNSON: Answering your letter of December 22, it will be all right for you to use the name of the General Federation of Women's Clubs as endorsing ratification of the Genocide Convention provided your statement coincides with the resolution adopted by the board of directors of the General Federation of Women's Clubs. This resolution is enclosed. May I call your attention to the fact that we have endorsed the principle of the Genocide Convention rather than a particular bill, and that we have qualified our endorsement by urging "ratification with adequate constitutional safeguards."

Mrs. William Dick Sporborg, consultant to the international relations department of the General Federation, will appear at the hearings and speak for our organization. We are therefore sending your letter to her in case she wishes to submit a written statement in advance.

Very sincerely yours,

MRS. THALIA S. WOODS, *Executive Secretary.*

GENOCIDE CONVENTION

Whereas the United Nations has undertaken to outlaw genocide, the mass extermination of national, religious, ethnic or racial groups, as an international crime; and

Whereas the General Assembly unanimously adopted the Genocide Convention last year and it now awaits ratification by our Senate to which it was submitted in June 1949; Therefore

Resolved, That the Board of Directors of the General Federation of Women's Clubs at its meeting, October 1949, endorses the principle of the Genocide Convention and urges its prompt ratification with adequate constitutional safeguards, and further

Resolved, That copies of this resolution be sent to the President; the Department of State; members of the Senate Foreign Relations Committee; Philip Jessup, Ambassador at Large; Warren Austin, United States Representative to the United Nations; and Trygve Lie, Secretary General of the United Nations.

MRS. AMBROSE DIEHL,
Chairman,
MRS. WILLIAM DICK SPORBURG,
Consultant,
International Relations Department.

Approved: Resolutions Committee.

NATIONAL PEACE CONFERENCE,
New York 18, N. Y., January 19, 1950.

Mr. WILLARD JOHNSON,
Secretary, United States Committee on a UN Genocide Convention,
New York, N. Y.

DEAR MR. JOHNSON: It is my privilege to transmit to you a resolution unanimously adopted on January 16, 1950, by the conferees of the National Peace Conference meeting in regular session in New York City. The resolution reads as follows:

"The conferees of the National Peace Conference having followed with the greatest interest the country-wide discussion on the question of the ratification of the convention on the crime of genocide, voting as individuals, reaffirm their continued support of the convention and urge its early ratification by the Senate of the United States at the present session of Congress."

The composition and activities of the National Peace Conference are described in the enclosed folder.

With appreciation for your attention to this expression of opinion, I am,

Faithfully yours,

JANE EVANS, *President.*

THE NATIONAL FEDERATION OF BUSINESS AND
PROFESSIONAL WOMEN'S CLUBS, INC.,
New York 23, N. Y., January 11, 1950.

Mr. WILLARD JOHNSON,
United States Committee for a United Nations Genocide Convention,
New York, N. Y.

DEAR MR. JOHNSON: Thank you for your letter of January 10. I have forwarded it to Miss Geneva McQuatters, our director of legislation and Washington representative, who has requested a hearing from the Senate Foreign Relations Committee on the Genocide Convention.

A letter at a previous date has also been sent to members of the subcommittee and to the Secretary of State.

The enclosed memorandum on the Genocide Convention was sent to club and State leaders with the request that our local clubs contact their representative.

Thank you for your assistance.

Sincerely and cordially,

ESTHER W. HYMER,
Director, International Relations Observer to the United Nations.

MEMORANDUM ON THE GENOCIDE CONVENTION

A convention on the crime of genocide, which means deliberate destruction of national, religious, and racial groups, was unanimously adopted by the General Assembly of the United Nations on December 11, 1948. The convention must be ratified by 20 member States in order to become an effective step toward establishing a world rule of law. Ratification was urged by President Truman in his message to the Senate transmitting the convention (June 16, 1949).

"America has long been a symbol of freedom and democratic progress to peoples less favored than we have been, and we must maintain their belief in us for our policies and our acts."

"By the leading part the United States has taken in the United Nations in producing an effective international legal instrument outlawing the world-shocking crime of genocide, we have established before the world our firm and clear policy toward that crime. By giving its advice and consent to my ratification of this convention, which I urge, the Senate of the United States will demonstrate that the United States is prepared to take effective action on its part to contribute to the establishment of principles of law and justice."

REASONS FOR THE RATIFICATION OF THE GENOCIDE CONVENTION BY THE SENATE OF THE UNITED STATES

1. The Genocide Convention is fully in line with American tradition. Two Republican Presidents, Theodore Roosevelt and William Howard Taft, rebuked the Russian Czar on pogroms; two Democratic Presidents, Woodrow Wilson and Franklin D. Roosevelt, tried to save the Armenians and the Nazi victims of genocide, respectively.

2. According to American law, the international crime of genocide, like piracy, will be within the purview of article I of the Constitution, which says that "Congress shall have the right to define and punish piracies and other offenses under the law of nations." No controversial issues of States' rights are involved, because international crimes are always under Federal jurisdiction.

3. America is providing political, economic, and military leadership to the world. By taking a strong stand on such a humanitarian issue as genocide, America will prove to the world that its leadership is essentially undertaken for peaceful and humanitarian purposes only.

4. Ratification of the convention by the Senate at this session would demonstrate again to the world the continuing support of the United Nations by this country, and encourage speedy ratification by other countries.

5. Genocide is one of the most important humanitarian issues before the governments of the world. Genocide did not stop with Hitler. During the last 2 years in the United Nations charges of genocide have been brought by Pakistan that 1,000,000 Moslems have been killed in India; by representatives of three Baltic states that religious and intellectual leaders have been destroyed, families separated and many deported into conditions which have left physical destruction; by Greece that more than 5,000 Greek children have been kidnaped from their mothers by the guerrillas.

6. Genocide is a threat to social and international peace because it creates national and international tensions. It is a perpetuation of hatred and revenge in intergroup relations.

7. In its larger dimensions, genocide is used by dictators and conquerors to consolidate their conquests by wiping out native populations which might resist in the future. World indifference to such criminal tactics strengthen dictators and encourages them to further aggressions.

8. The women of the world have a particular stake in this convention. Genocide does not imply the destruction of life only, but also its prevention through such acts as compulsory sterilization and abortion. Here women are the special target of genocide. It deeply affects family ties and is concomitant with the mass phenomenon of rape, abduction, and other degradations imposed upon women. Continuity of a nation can also be disrupted by the wholesale stealing of children bringing suffering and anguish to the parents.

9. Genocide entails also destruction of economic resources and disruption of world trade. Although predominantly motivated by national, racial, and religious hatred, it frequently brings with it the destruction of property, pillage, and arson. For example, in 1947, in the subcontinent of India, genocide was preceded by economic dislocation through such destruction of property, which resulted in interruption of trade with other countries, especially the United States of America. After the destruction of the Armenians, who were the craftsmen and tradesmen of Turkey, the volume of trade between the west and the Near East diminished by 32 percent. The destruction of the Jews in Germany and other countries resulted in unpaid commercial debts to creditor nations who were thus penalized by Nazi genocide.

10. The preservation of religious groups throughout the world is important from the point of view of moral stability and spiritual solace in society. Genocide, which martyrs religious leaders and their followers and desecrates or destroys their churches, strikes at the roots of the society in which it takes place.

11. Ratification of the convention will strengthen the United Nations and its prestige in the world.

12. Support for the Genocide Convention has come not only from all religions, but from labor, management, veterans', women's farm and civic organizations.

13. Since 1946, the American delegation has assumed leadership in the formulation and adoption of the convention. The United States delegate in Paris, Ernest Gross, urged other countries to sign and ratify. Twenty-seven nations, including the United States have signed. Norway, Ethiopia, and Australia have ratified.

14. The convention is before a subcommittee of the Senate Foreign Relations Committee, which was appointed on July 29, consisting of McMahon, (Democrat) Connecticut, Chairman; Pepper, (Democrat) Florida; Thomas, (Democrat) Utah; Lodge, (Republican) Massachusetts and Hickenlooper, (Republican) Iowa. It is suggested that interested individuals and groups write to Senator McMahon urging that the convention be reported out favorably and to their Senators requesting ratification.

AUGUST 1949.

[Telegram]

WASHINGTON, D. C.

JAMES N. ROSENBERG,
Chairman, United States Committee for a United Nations Genocide Convention:

Mass destruction of national, racial, and/or religious groups shakes the conscience of mankind and inflicts great loss on humanity. Labor suffers from this crime irrespective of whether it is inflicted by Nazis, Communists, or Fascists regimes. The term applied to these sufferings is genocide. We have urged and shall continue to urge Senate approval of the genocide convention adopted by the United Nations General Assembly.

JAMES B. CAREY,
Secretary-Treasurer, CIO.

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE,
New York, N. Y., December 20, 1949.

Mr. JAMES N. ROSENBERG,
New York 6, N. Y.

DEAR MR. ROSENBERG: I understand that Judge Patterson in his capacity as chairman of the Legal Advisory Committee to the United States Committee for a United Nations Genocide Convention will present the case for the ratification of that convention before the subcommittee of the Senate Foreign Relations Committee sometime next January. The case is one in which I am deeply interested not only because the ratification of that convention is in itself a valid and pressing step to take in the furtherance of the fundamental interests of our country and of international peace but also because failure to ratify would mean that our country is taking a step backward to the isolation policies which followed World War I and which in the long run proved so dangerous to us and the world.

The Genocide Convention is the first definite act to which the world has subscribed in the Assembly of the United Nations along the path that leads to the guaranties of freedom in a world of law and order. The nations of the world have twice unanimously declared genocide to be an international crime, a fact of which the history of nazism leaves no doubt. Genocide is not only a heinous felony; it drives forth countless refugees to every corner of the world, causing insupportable burdens; it is an over act leading to a new world war.

Secretary of State Marshall argued for the convention in the following terms before the General Assembly which unanimously adopted the Genocide Convention on December 9, 1948:

"Governments which systematically disregard the rights of their own people * * * are likely to seek their objectives by coercion and force in the international field."

At San Francisco it was our own delegation and especially Senators Vandenberg and Connally who insisted that the structure of international peace should formally recognize that its foundation is provision for justice within as well as between nations. There is no question but that this is a test of our stability of purpose in this regard. As for the argument that the convention can only be enforced by disregarding the provisions of the American Constitution, which has been thoughtlessly advanced in certain quarters, I am confident that a more reasoned and competent judgment on these matters will prevail in the Senate committee. As a lifelong student of these questions I would insist upon treating these objections as being contrary to both law and history. The Genocide Convention is in absolute conformity with both the moral and legal principles upon which our Government was founded.

Very truly yours,

JAMES T. SHOTWELL.

MARCH 18, 1949.

The Honorable LYNDON B. JOHNSON,
The United States Senate, Washington, D. C.

MY DEAR LYNDON: Before very long the United Nations Genocide Convention will be submitted to the Senate for approval. Naturally every decent American will support a measure to outlaw mass destruction of religious, racial, and ethnical groups. I am writing this letter merely to bring the matter to your attention and to express my confidence that you will support the convention when it comes to a vote.

Trusting that they are taking good care of you in Washington and with best wishes, I remain

Very sincerely yours,

Most Rev. ROBERT E. LUCEY, S. T. D.,
Archbishop of San Antonio.

DECEMBER 30, 1949.

Senator BRIEN MCMAHON,
Chairman, Subcommittee of the United States Foreign Relations Committee,
Washington, D. C.

DEAR SENATOR MCMAHON: The Loyal Order of Moose has for sometime interested itself in the content of the United Nations convention outlawing genocide and believe that this convention fully embodies the principles of human justice and international decency.

The Loyal Order of Moose is very happy to join hands with all other patriotic organizations in urging that the United States Senate ratify the United Nations Genocide Convention as an international treaty.

Sincerely yours,

——— ———, *Director General.*

THE SALVATION ARMY,
NATIONAL HEADQUARTERS,
New York 11, N. Y., January 9, 1950.

Mr. WILLARD JOHNSON,
New York, N. Y.

DEAR MR. JOHNSON: We wish to acknowledge receipt of your letter of December 22 with reference to adoption by the United States of the United Nations Genocide Convention. The Salvation Army will be glad to endorse this move, and we are attaching two copies of our statement to Senator McMahon in behalf of ratification of this treaty.

This will advise you also, that Maj. George Ribble will be the Salvation Army representative at the hearings.

Sincerely yours,

SENIOR CAPTAIN DON PITT,
Director, National Research and Publicity.

To Senator BRIEN MCMAHON.

We of the Salvation Army have read carefully the text of the United Nations convention outlawing genocide, and would urge that this measure be given favorable consideration by the subcommittee of the Senate's Foreign Relations Committee. It is hoped that the treaty will be ratified without reservations when presented to the Senate. The Salvation Army feels that the adoption of the Genocide Convention by the United States is a very important move in the direction toward world peace. We have lived through recent instances of genocide and are convinced that adoption of the convention is imperative if such atrocities are to be stopped.

CONVENTION AGAINST GENOCIDE

RESOLUTION ADOPTED AT THE THIRTY-FIFTH ANNUAL CONVENTION OF HADASSAH, THE WOMEN'S ZIONIST ORGANIZATION OF AMERICA, SAN FRANCISCO, CAL.

Whereas in recent years we have witnesses with shock and horror the killing of millions of defenseless men, women, and children in Germany, Poland, and elsewhere, solely because of their religious, linguistic or ethnic background; and

Whereas the Assembly of the United Nations, meeting in Paris in December 1948, unanimously adopted a convention for the prevention and punishment of the perpetrators of the crime of genocide, noting that, while the killing of an individual is considered murder and is a violation of law, there is no law against the extermination of a whole population; and

Whereas this convention against genocide has been submitted to the Senate of the United States by the President for ratification: Therefore be it

Resolved by Hadassah, in convention assembled at San Francisco, That we respectfully urge the prompt ratification of the convention against genocide by the Senate of the United States.

Further we recommend that our members individually write their Senators, to urge this ratification as soon as possible.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
January 6, 1949.

Mr. WILLARD JOHNSON,
General Secretary, United States Committee for a United Nations Genocide Convention, New York 16, N. Y.

MY DEAR MR. JOHNSON: Your letter of December 22 addressed to our New York office has been referred to me for consideration and reply.

On February 9, 1948, our national board of directors adopted the following resolution with regard to genocide:

"Genocide Treaty: The secretary recommended that the association join with other organizations in urging the United Nations to immediately adopt a genocide treaty to outlaw mass destruction of national, racial and religious groups.

"Upon motion, duly seconded, it was voted that the recommendation of the secretary be approved by the board."

We plan to testify at hearings by the Senate Foreign Relations Committee on this matter and I will make a brief statement on behalf of the association. We will be very glad for you to apprise the Senate committee of our intention.

Very truly yours,

LESLIE S. PERRY,
Legislative Counsel.

B'NAI B'RITH,
Washington 1, D. C., December 28, 1949.

Mr. WILLARD JOHNSON,
General Secretary, United States Committee for a United Nations Genocide Convention, New York 16, N. Y.

DEAR MR. JOHNSON: In reply to your letter of December 22, B'nai B'rith has long been active on behalf of the Genocide Convention.

In response to your query, B'nai B'rith may be included with other organizations as endorsers. We have already received an invitation from Senator Brien McMahon to be represented at the hearings of the Senate subcommittee. This organization has been active, not only in this country but in other countries, on behalf of the ratification of the convention.

With kind wishes,

Sincerely.

MAURICE BISGYER, *Secretary.*

CENTRAL CONFERENCE OF AMERICAN RABBIS,
OFFICE OF THE PRESIDENT,
Cincinnati 20, Ohio, January 4, 1950.

Mr. WILLARD JOHNSON,
General Secretary, New York 16, N. Y.

DEAR MR. JOHNSON: You may include our name as endorsers and if you wish a statement on behalf of our organization. Please address the Rev. Dr. A. V. Goodman, chairman of the committee on justice and peace, 333 Union Arcade, Davenport, Iowa. I would suggest that you address your communications directly to him in order to secure a more immediate response.

Very cordially yours,

JACOB R. MARCUS.

NOVEMBER 17, 1949.

Hon. HERBERT H. LEHMAN.
Hon. IRVING M. IVES.
Hon. BRIEN MCMAHON.

DEAR SENATORS: At the regular meeting of our organization, the Columbus Alliance, Inc., a fraternal, charitable and civil organization of Bronx County, N. Y., held on November 16, 1949, the membership passed a resolution denouncing as outrageous and most barbaric the extermination of entire groups of human

beings, for no other reason than race, nationality, or religious beliefs, as has been practiced in different times and places in the history of mankind, and, therefore, favoring the ratification by the Senate the Convention on Prevention and Punishment of the Crime of Genocide unanimously passed by the General Assembly on December 9, 1948, as the best, most intelligent and efficient method conceived to outlaw such inhuman and diabolical acts.

The membership also unanimously voted that their approval of the ratification be communicated to you by this letter, urging you to lend your earliest support to their views in this matter.

Respectfully yours,

COLUMBUS ALLIANCE, INC.,
By WILLIAM F. LA MORTE,
Secretary.

Charles A. Loreto, President.

JANUARY 12, 1950.

Hon. BRIEN MCMAHON,
Chairman, Subcommittee of the Senate Foreign Relations Committee on the Genocide Convention,
Senate Office Building, Washington, D. C.

DEAR SENATOR MCMAHON: Request is made for an opportunity for this organization to be heard before the subcommittee of the Senate Foreign Relations Committee in connection with the hearings on the Genocide Convention, scheduled to begin Monday, January 23.

This organization advocates ratification.

In connection with setting of time for us, may I respectfully suggest that we shall be happy to be available at such time as you designate with the exception of the morning of the 24th, in view of my scheduled conference with the President of the United States on the morning of January 24.

I plan personally on being present. If, for any reason, there is a conflict, however, we shall be represented by Mr. Bernard Weitzer, 3147 Sixteenth Street NW., Washington, D. C., our legislative representative.

We shall, under separate cover, forward to you a statement which we respectfully request be included in the record.

Most sincerely yours,

JACKSON J. HOLTZ,
National Commander.

Copies for Bernard Weitzer, Archie H. Greenberg, Joseph F. Barr.

AMERICAN UNITARIAN ASSOCIATION,
Boston 8, Mass., January 16, 1950.

COCHAIRMEN, UNITED STATES COMMITTEE FOR A UNITED NATIONS GENOCIDE CONVENTION,
New York 16, N. Y.

GENTLEMEN: As you suggested in your letter of January 12, we have written Senator Brien McMahon, urging ratification of the Genocide Convention and have sent carbons of this letter to the other members of the Foreign Relations Committee. In this letter we included copies of the resolution passed by the American Unitarian Association urging ratification of the convention.

Enclosed you will find the resolution as passed by our board of directors and also a copy of the mailing which we sent to our active ministers. We also included the Genocide Convention in this mailing.

We hope to have a Unitarian lawyer represent us at the hearings on the Genocide Convention, which we understand are to be held on January 23 and 24.

Very truly yours,

CAROLLY KLEINSTUCK,
Secretary to Dr. M. E. Bush.

PRELIMINARY DRAFT OF A PROPOSED BOARD RESOLUTION ON HUMAN RIGHTS AND GENOCIDE (SUBMITTED BY THE ADVISORY COMMITTEE, DEPARTMENT OF ADULT EDUCATION)

Whereas the American Unitarian Association has consistently endorsed all practicable steps toward a more enduring peace, embodying such endorsement within recent years in a number of resolutions urging support of the United

Nations and its subsidiary agencies as well as resolutions in support of human rights; and

Whereas a just world order must be founded upon protection of the human rights of both individuals and groups; and

Whereas it has been demonstrated time and again that the moral judgment of mankind is a relevant and vital factor in determining the policies and actions of government: Therefore be it

Resolved, That the board of directors of the American Unitarian Association, meeting in Boston on January 10, 1950, urges ratification by the United States Senate of the Genocide Convention as drafted by the United Nations Human Rights Commission, adopted unanimously by the General Assembly of the United Nations in Paris on December 9, 1948, and as recommended for ratification by President Truman and by the General Assembly of the United Nations.

GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS,
Takoma Park, Washington 12, D. C., January 2, 1950.

Senator BRIEN MCMAHON,
Senate Office Building, Washington, D. C.

DEAR SENATOR MCMAHON: It has recently come to our attention that the subcommittee of the Foreign Relations Committee under your chairmanship is to have a hearing soon on the question of whether the United Convention outlawing genocide should be approved by the United States Senate.

This matter was studied today by the executive committee of the General Conference of Seventh-day Adventists, and we took an action placing our denomination on record as supporting this convention, and requesting the Foreign Relations Committee to recommend its ratification to the Senate. We believe that genocide is one of the most ancient and awful of crimes and that the United States Government should join in an international treaty in declaring it to be a crime, and pass appropriate legislation to prevent and punish genocide.

We, therefore, trust that your committee will recommend this convention to the Senate as it has been passed by the General Assembly of the United Nations.

I am

Yours sincerely,

J. I. ROBISON,
Associate Secretary of the General Conference.

COMMUNITY SERVICE, INC.,
Yellow Springs, Ohio, December 31, 1949.

UNITED STATES COMMITTEE FOR A UN GENOCIDE CONVENTION,
New York 16, N. Y.

DEAR SIRS: We are glad to have our organization included with others as endorsers in favor of ratification of the Genocide Convention. It is shocking that the American Bar Association should be opposed to ratification of so vital a measure.

Sincerely yours,

COMMUNITY SERVICE, INC.
GRISCOM MORGAN,
Acting Director.

THE PROVINCIAL ELDERS' CONFERENCE,
EXECUTIVE BOARD OF THE MORAVIAN CHURCH IN AMERICA,
Bethlehem, Pa., January 3, 1950.

Hon. BRIEN MCMAHON, Esq.,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR MCMAHON: In behalf of the Provincial Elders' Conference, which is the executive board of the Northern Province of the Moravian Church in America, I wish to record with your committee the support of our board in behalf of the United Nations convention outlawing genocide. It is our sincere hope that the subcommittee of the Foreign Relations Committee, which you are leading as chairman, will see its way clear to recommend favorable action upon this convention.

It is our deep conviction that it is a sin and a crime to exterminate any group or race of people who may at a particular moment in history seem dangerous or undesirable to a group who hold power. We believe further it is the duty of the United States to take the lead wherever possible in upholding the highest ethical and moral standards for national and international conduct.

Assuring you of our sincere and sympathetic interest in the important work and responsibilities laid upon you, I remain,

Cordially yours,

F. P. STOCKER, *President.*

Copy for Mr. Willard Johnson.

SYNAGOGUE COUNCIL OF AMERICA,
New York, N. Y., January 9, 1950.

Mr. WILLARD JOHNSON,
United States Committee for a United Nations Genocide Convention,
New York 16, N. Y.

MY DEAR MR. JOHNSON: The Synagogue Council of America has authorized participation in the work of your committee and instructed me to send you the enclosed statement on genocide.

We look forward to further cooperation in this matter.

Sincerely yours,

Dr. BERNARD J. BAMBERGER, *President.*

JANUARY 4, 1950.

The Synagogue Council of America appeals to the United States Senate swiftly to ratify the United Nations convention declaring genocide a crime under international law.

No on will deny that the deliberate attempt to destroy human beings en masse because of their national, racial or religious identity is a horrible offense against the laws of God and man. Nevertheless, in the last half century men and governments have repeatedly practiced this tragic crime on a vast scale.

The Synagogue Council is cognizant of the fact that Jews have been among the chief victims of genocide. They are not, however, the only group whose extermination has been attempted in recent decades, or whose safety is threatened now.

A great stride forward toward abolishing this crime against humanity would be the adoption of the UN Genocide Convention.

American leadership had a primary role in the creation of this document. Immediate ratification by the United States Senate will forcibly demonstrate the devotion of the American people to moral principles and human values.

FIRST-GRACE UNIVERSALIST PARISH,
Lowell, Mass., January 7, 1950.

Mr. WILLARD JOHNSON,
New York, 16, N. Y.

DEAR SIR: The World Order Commission of the Universalist Church of America wholeheartedly endorses the ratification of the UN Genocide Convention, and the name of our organization may be included with the others.

Sincerely,

MASON F. MCGINNESS,
Chairman, World Order Commission.

NATIONAL COUNCIL OF NEGRO WOMEN, INC.,
Washington 5, D. C., January 6, 1950.

Mr. WILLARD JOHNSON,
General Secretary, National Conference of Christians and Jews,
New York 16, N. Y.

DEAR MR. JOHNSON: The National Council of Negro Women is anxious to have its representative appear before the subcommittee for the Genocide Convention and has written to Senator McMahon for a scheduled date.

We are asking Mrs. Eunice H. Carter, 516 Fifth Avenue, New York, our official observer to the United Nations, to prepare a statement in anticipation of her appearance before the committee.

We are glad to add the name of our organization to the list of others as endorsers as we feel we have an obligation to urge ratification of this convention by our Senate.

Very truly yours,

DOROTHY B. FERREBEE, M. D., *President.*

THE NATIONAL ASSOCIATION OF NEGRO BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.,
Philadelphia 31, Pa., January 9, 1950.

Mr. WILLARD JOHNSON,
General Secretary, United States Committee for a United Nations Genocide Convention, New York 16, N. Y.

DEAR MR. JOHNSON: I enclosed herewith resolution passed at the executive meeting of our association on December 10, 1949, relative Genocide Convention. Copy of this resolution has been sent to Senator Tom Connally.

Hoping for ratification, we remain

Very truly yours,

FLORENCE MADISON HILL,
Past National President.

RESOLUTION ON GENOCIDE

The National Association of Negro Business and Professional Women's Clubs, Inc., in executive sessions in New York City, December 10, 1949, reviewed the Genocide Convention now before the Senate Foreign Relations Committee for ratification; and

Whereas genocide, the mass destruction of entire groups of the human family, is the most awful of crimes, that it has inflicted great losses on humanity; and

Whereas that all mankind should be liberated and forever free from such sourge: Be it

Resolved, That we heartily endorse the Genocide Convention and urge its ratification.

THE NATIONAL ASSOCIATION OF NEGRO BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.,
GENEVA K. VALENTINE, *President.*
By FLORENCE MADISON HILL, *Past President.*

ODD FELLOW AND REBEKAH VISITATION COMMITTEE OF WESTERN PENNSYLVANIA,
Pittsburgh, Pa., December 30, 1949.

Mr. WILLARD JOHNSON,
General Secretary, United States Committee for a United Nations Genocide Convention, New York 16, N. Y.

MY DEAR MR. JOHNSON: Under our new title, indicated by our letterhead, we have some time ago, by motion unanimously passed, indicated that we oppose genocide and have so notified Senator Brian McMahon of our action by sending him a copy of the resolution and also a copy to you.

We have received an acknowledgement of the receipt of our resolution by Senator McMahon's secretary. Our name can be used as in opposition to genocide.

I suppose we erred in not telling you of the change in our title.

Hoping for a ratification by the Foreign Relations Committee, I remain

Very truly yours,

JOHN MCCALL, SR., *Chairman.*

JEWISH LABOR COMMITTEE,
New York, N. Y., January 16, 1950.

Senator BRIEN MCMAHON,
Chairman, Subcommittee Foreign Relations Committee,
Washington, D. C.

DEAR SIR: The Jewish Labor Committee, with an aggregate membership of half a million Jewish trade-unionists affiliated with both the A. F. of L. and the CIO, wish to express to you the viewpoint of the working Jewish masses in this

country concerning the Genocide Convention now in deliberation before your subcommittee.

The Jewish people, during the many centuries of their existence, have borne sufferings without end. Again and again, they were singled out for persecution and even annihilation by tyrannical governments oppressing their own people and seeking to cover up the crimes against their people by crimes against humanity, committed against the Jewish minority. Nor were the Jews the only minority in this unfortunate position. There have been other peoples in history who suffered similar barbarian treatment and even extermination, on a lesser scale.

The catastrophe which the tyrannical Nazi regime loosed on humanity is sufficient proof that there can be no hope for an enduring peace unless the elementary rights of men are protected by the world organization of the peace-loving nations.

The Jewish Labor Committee welcomes the Genocide Convention as the first international law to protect the most sacred right of helpless minority groups in all countries, their right to live as human beings. The solemn obligation of the United Nations to punish genocide and to prevent mass murder and destruction of minority groups must be the answer of the civilized world to the Nazi gas chambers, the promise that it will never happen again.

The United States Government assumed world leadership in the General Assembly of the United Nations in furthering the adoption of the Convention on Genocide. We now consider it to be the moral duty of the United States Senate to complete this honorable task by ratifying this convention.

May we express our earnest hope that your committee will reach the conclusion to recommend to the United States Senate the ratification of the Genocide Convention.

Sincerely yours,

JEWISH LABOR COMMITTEE,
ADOLPH HELD, *Chairman.*

WORLD GOVERNMENT ASSOCIATION, INC.,
New York, N. Y., January 17, 1950.

The World Government Association respectfully submits the following proposals regarding the Genocide Convention, to the Senate Foreign Relations Committee, Senate Office Building, Washington, D. C.

"The World Government Association is wholeheartedly in favor of the Genocide Convention. The association urges the final inclusion in its protection of political and economic groups; and further recommends that eventually, when world conditions make it safe for centralizing power in a world government, every nation should relinquish enough of its sovereignty for an international court to render final decisions and impose penalties for the crime of genocide as a first step toward world government; followed by the similar convention on control of the atom bomb as outlined in the Baruch plan."

MRS. STANLEY P. WOODWARD,
President, World Government Association.

GREAT COUNCIL OF THE UNITED STATES OF THE
IMPROVED ORDER OF RED MEN,
New York, N. Y., January 18, 1950.

MR. WILLARD JOHNSON,
General Secretary, United States Committee for a United States Genocide Convention, New York, N. Y.

DEAR MR. JOHNSON: In behalf of the Great Council of the United States, Improved Order of Red Men and Degree of Pocahontas, I hereby endorse the actions of the United States committee for a United Nations Genocide Convention in seeking the ratification by the United States Senate of the Genocide Convention as an international treaty now pending hearings.

As the oldest fraternity of purely American origin dedicated to patriotic and benevolent service, we deem it a privilege to give every assistance to this humanitarian step in international relations.

Sincerely,

LOUIS BUFFLER,
Great Incohonee.

NATIONAL COUNCIL OF WOMEN OF THE UNITED STATES,
New York, N. Y., January 20, 1950.

Senator BRIEN MCMAHON,
Senator ELBERT THOMAS,
Senator CLAUDE PEPPER,
Senator BOURKE HICKENLOOPER,
Senator CABOT LODGE, Jr.
Members of the Subcommittee on Genocide.

DEAR SIRS: At the first postwar conference of the International Council of Women, held in Philadelphia, Pa., September 5–12, 1947, at the invitation of the National Council of Women of the United States, the assembled delegates unanimously adopted the following resolution:

"The International Council of Women in conference assembled in Philadelphia, September 5–12, unequivocally supports the principle of the proposed international agreement to be presented to the United Nations General Assembly at Lake Success later this month for a convention for the prevention and punishment of genocide by an international criminal tribunal.

"With adoption of this convention it urges its national councils to work in their respective countries for prompt signature and ratification."

Therefore now, the National Council of Women of the United States urges ratification by the Senate of the Genocide Convention in order to obviate one of the causes of war as a barbaric practice which should have been outlawed by civilized nations long since, and as an economic as well as human waste. Furthermore, we urge this particularly as proof of the good faith of the United States of America in supporting the United Nations in a cause for which the United States originally assumed leadership at the General Assembly in Paris in 1948 when this convention was unanimously adopted.

Respectfully yours,

HELEN H. EVANS,
President, National Council of Women of the U. S. A.
CONSTANCE SPORBORG,
Chairman, Special Committee for the Ratification of the Genocide Convention, National Council of Women of the U. S. A.

Enclosure: ICW Philadelphia resolution.

MEMBER ORGANIZATIONS OF THE NATIONAL COUNCIL OF WOMEN OF THE UNITED STATES, INC., APRIL 14, 1949, THROUGH JANUARY 1950, THROUGH WHOM ARE REACHED APPROXIMATELY 5,000,000 INDIVIDUAL WOMEN

American Cancer Society, 47 Beaver Street, New York City (Mrs. H. V. Milligan, national commander).
American Woman's Voluntary Services, 99 Park Avenue, New York City (Mrs. Ogden Mills, president).
Association of Army and Navy Wives, 1431 Spruce Street, Berkeley, Calif. (Mrs. Carter Collins, president).
Hadassah, 1819 Broadway, New York City (Mrs. Samuel Halprin, president).
Indianapolis Council of Women, 406 East Fifty-first Street, Indianapolis, Ind. (Mrs. B. Lynn Adams, president).
May Wright Sewall Indiana Council of Women, Route No. 1, Box 256, New Augusta, Ind. (Mrs. Clayde McLean, president).
National Association of Colored Women, Inc., 1114 O Street NW., Washington, D. C. (Mrs. Ella Stewart, president).
Rhode Island Council of Women, 110 Alabama Avenue, Providence, R. I. (Mrs. Charles Everson, president).
Young Woman's Mutual Improvement Association, 33 Bishop's Building, Salt Lake City, Utah (Mrs. Bertha Reeder, president).
National Panhellenic Conference, 302 Fall Creek Drive, Ithaca, N. Y. (Miss Pearl Green, chairman).
National Association of Negro Business and Professional Women's Clubs, 1337 North Fifty-seventh Street, Philadelphia, Pa. (Mrs. Florence M. Hill, president).
National Kindergarten Association, 8 West Fortieth Street, New York City (Miss Bessie Locke, executive secretary).
National Woman's Christian Temperance Union, 1730 Chicago Avenue, Evanston, Ill. (Mrs. D. Leigh Colvin, president).
Pan Pacific Women's Association, 555 Park Avenue, New York City (Mrs. Edgerton Parsons, chairman).

Osteopathic Women's National Association, 340 West Acacia Street, Glendale, Calif.
Phila Federation of Women's Clubs and Allied Organizations, 7928 Montgomery Avenue, Elkins Park, Pa. (Mrs. W. O. Mahon, president).
National Woman's Relief Society, 33 Bishop's Building, Salt Lake City (Mrs. Belle Spafford, president).
The Salvation Army, 120 West Fourteenth Street, New York City (Mrs. Donald McMillan, regional director).
National Council of Negro Women, 1318 Vermont Avenue NW., Washington, D. C. (Dr. Mary McLeod Bethune, president).
National Motion Picture League, the Biltmore, Forty-third Street and Madison Avenue, New York City (Mrs. Stanley Woodard, president).
National Woman Party, 144 B Street NE., Washington, D. C. (Miss Anita Pollitzer, chairman).

SOME AMERICAN PROTESTANT, CATHOLIC, AND JEWISH CLERGYMEN SUPPORTING GENOCIDE CONVENTION

(Names certified by Willard Johnson, General Secretary, United States Committee for Genocide Convention, New York, N. Y.)

Dr. Charles Arbuckle
Rabbi David Aronson
Dr. Henry A. Atkinson
Bishop James C. Baker
Bishop P. W. Bartholome
Rabbi Bernard Bamberger
Dr. John C. Bennett
Rabbi Philip Bernstein
Rabbi P. D. Bookstaber
Dr. W. Russell Bowie
Dr. George Pitt Beers
Dr. Louis Binstock
Rabbi Ben Zion Bokser
Dr. M. R. Boynton
Rabbi Barnett Brickner
Dr. Arlo Ayres Brown
Dr. George W. Buckner
Rt. Rev. A. J. Burke
Rev. James U. Conwell, S. J.
Rabbi Abraham Cronbach
Bishop Mark K. Carroll
Rabbi Henry Cohen
Dr. J. Henry Carpenter
Dr. Russell Clinchy
Dr. Edwin T. Dahlberg
Rabbi Daniel Davis
Dr. R. E. Diffendorfer
Dr. Maurice Eisendrath
Rev. Allen Farrell, S. J.
Dr. Julian P. Feibelman
Dr. S. Andhil Fineberg
Dr. William Fineshriber
Rev. George B. Ford
Dr. Leo M. Franklin
Dr. Harry Emerson Fosdick
Dr. Nelson Glueck
Dr. Solomon Goldman
Dr. Julius Gordon
Dr. Morris Gordon
Bishop Charles Gilbert
Dr. Herbert Goldstein
Rabbi Gerson Hadas
Dr. John Haynes Holmes
Dr. Roland B. Gittelsohn
Dr. Benedict Glazer
Dr. L. W. Goebel
Dr. Israel Goldstein
Dr. Abram V. Goodman
Rabbi Milton Grafman
Dr. Robert Gordis
Dr. Solomon Grayzel
Dr. Simon Greenberg
Dr. Milton Greenwald
Rev. Charles A. Hart
Bishop Louis Hartman
Rev. John M. Hayes
Bishop Henry W. Hobson
Rabbi Isidor Hoffman
Bishop Ivan Lee Holt
Dr. Walter Horton
Dr. Paul Hutchinson
Bishop Jules B. Jeanmard
Dr. C. Oscar Johnson
Rabbi Henry Kagan
Rabbi Robert Kahn
Dr. Moredcai Kaplan
Rabbi Manuel Laderman
Dr. John Howland Lathrop
Dr. Kenneth Scott Lattourette
Bishop W. Appleton Lawrence
Rabbi Morris Lazaron
Rabbi Monroe Levens
Archbishop Robert E. Lucey
Dr. Benjamanx Mayes
Dr. Eugene Mannheimer
Rabbi David Marx
Dr. Oscar E. Maurer
Dr. Arthur C. McGiffert, Jr.
Dr. Robert J. MacCracken
Bishop Eugene McGuiness
Dr. Samuel Mayerberg
Dr. S. Felix Mendelsohn
Dr. Julian Morganstern
Dr. A. J. Muste
Dr. Justin Wroe Nixon
Bishop Joseph Nelligan
Dr. Perry Nussbaum
Dr. Albert W. Palmer
Rabbi David Philipson
Rabbi Ely Pilchik
Rabbi David Polish
Dr. Daniel A. Poling

SOME AMERICAN PROTESTANT, CATHOLIC, AND JEWISH CLERGYMEN SUPPORTING GENOCIDE CONVENTION—Continued

Dr. David deSola Pool
Dr. Edwin McNeil Poteat
Rabbi Emanuel Rackman
Dr. Joseph Rauch
Dr. Irving F. Reichert
Dr. M. Theron Rankin
Dr. H. Elihu Rickel
Dr. Emory Ross
Rabbi Jacob P. Rudin
Archbishop Joseph Francis Rummel
Rabbi E. T. Sandrow
Rabbi Harry E. Schwartz
Dr. Guy Emery Shipler
Rabbi Albert Shulman
Dr. Lou Silberman
Dr. Jacob Singer
Dr. Joseph Sizoo
Dr. Sidney Tedesche
Dr. Samuel Thurman
Bishop Frank Thill
Dr. Channing Tobias
Dr. Joshua Trachtenberg
Dr. Walter W. Van Kirk
Dean L. A. Weigle
Bishop Vincent S. Waters
Dr. David Wice
Dr. Louis Wolsey
Dr. Joseph Zeitlin

THE GENOCIDE CONVENTION—ITS ORIGINS AND INTERPRETATION

(By Nehemiah Robinson, Institute of Jewish Affairs, World Jewish Congress, New York, N. Y., 1949)

PREFACE

The object of this study, the Convention on the Prevention and Punishment of Genocide, is the result of intensive work by the United Nations. The Secretariat, the Economic and Social Council, a special Committee set up for this purpose, the Sixth Committee of the General Assembly, and finally, the Assembly itself worked to formulate it. It became the first international treaty ever prepared by the United Nations to be proposed for signature and ratification by the States of the world.

The problem of genocide engaged much public attention since the word was coined by Prof. Rafael Lemkin, the indefatigable champion of the convention. During the last 2 years the question of formulating and setting in motion an international treaty to outlaw and punish this "heineous crime" commanded much interest the world over. Many organizations, especially those engaged in the protection of human rights, took a strong lead in this movement. The World Jewish Congress followed the evolution of the convention from its very inception and submitted to the United Nations a number of suggestions and recommendations relating to the object, scope, and provisions of the various drafts.

There are divergent views on the import of the convention. The Australian Prime Minister, Evatt, described its approval by the General Assembly as an "epoch-making event." On the other hand, the British Attorney General, Sir Hartley Shawcross, said that the Assembly should beware of deluding people into thinking that a great step forward had been taken through the adoption of the convention, whereas, in reality, nothing had been changed. The latter point of view was supported by Prof. J. L. Brierly (The Genocide Convention, The Listener, London, March 10, 1949); according to him, "the real danger is if we allow it to go out in the world, as has been done with this convention, that an important advance has been made when in fact nothing important has happened at all."

The present commentary strives to provide, in a totally detached way, a clue to the value of the convention, for only on the basis of a detailed study can its importance be properly estimated.

Professor Brierly's approach is what he calls "instinctively cautious and empirical." It is the right and duty of a lawyer to be cautious and empirical, but it serves no good purpose to proclaim in advance, on the basis of such an approach, the uselessness of the Genocide Convention. It would be much more proper to put it into practice and judge its usefulness on the basis of experience. But for this the convention must first be set in motion, i. e., the necessary number of States must ratify it.

It was signed, immediately upon its approval by the Assembly by 20 governments, and several more attached their signatures subsequently. To date, however, it has been ratified only by three States: Australia, Ethiopia, and Norway.

N. R.

NEW YORK, *July 1949.*

PART I. THE PREPARATION OF THE CONVENTION

1. Initial action

Action on genocide in the United Nations began with the request of the delegations of Cuba, India, and Panama (November 2, 1946) to the Secretary General to include in the agenda of the General Assembly an item on the prevention and punishment of genocide.[1] The request was accompanied by a draft resolution, to be adopted by the Assembly, drawing the attention of the Economic and Social Council to this crime, inviting it to study the problem and prepare a report on the possibilities of declaring genocide an international crime.

The General Assembly discussed this question on November 9 and 12, 1946, and referred it to the Sixth Committee, which, after discussion in the full committee[2] and its Subcommittee No. 3, submitted to the General Assembly the report of its Subcommittee[3] and a draft resolution on genocide.[4] The General Assembly adopted on December 11, 1946, unanimously and without debate, the draft resolution which became General Assembly's resolution 96 (I).[5] By this resolution, the General Assembly affirmed genocide to be a crime under international law and invited the member states of the UN to enact the necessary legislation for the prevention and punishment of this crime. It also requested the Economic and Social Council to undertake the necessary studies with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly.

2. Genocide before the ECOSOC

On March 12, 1947, the Secretary General addressed a note to the Economic and Social Council,[6] in which he suggested that the tasks of making studies and preparing a draft convention could be entrusted either to the Human Rights Commission or to a special committee consisting of several members of the Council. He further stated that the Secretariat could be asked to prepare a preliminary draft.

The ECOSOC dealt with this problem during its fourth session[7] and decided "to refer the question of the implementation of the General Assembly resolution on the crime of genocide to the committee of the whole on social matters." This committee had before it a United States draft resolution,[8] and a Cuban amendment suggesting that the preparation of the draft be entrusted to an ad hoc committee. On April 22, 1947, the Social Committee adopted a draft resolution,[9] which was later also adopted by the ECOSOC, with a United States of America amendment.[10] The resolution of the ECOSOC[11] instructed the Secretary General to undertake, with the assistance of experts in the field of international and criminal law, the necessary studies with a view of drawing up a draft convention in accordance with the resolution of the General Assembly. It also instructed the Secretary General to submit the draft to the next session of the Council, after consultation with the General Assembly's Commission on the Development and Codification of International Law and, if feasible, with the Commission on Human Rights, and after reference to all member governments for comments.

3. The first draft

Following the instructions given by the ECOSOC, the Secretary General requested the Secretariat's Human Rights Division to draw up a draft convention on the prevention and punishment of genocide. The preliminary draft was discussed with three experts invited by the Secretary General—Mr. Donnedieu de Vabres (professor at the law school in Paris), Professor Pella, chairman of the International Penal Law Association, and Professor Lemkin—as well as with experts of the Secretariat. Thereupon, the draft was amended and expanded, and became the first draft of the convention.[12]

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[1] Doc. A/BUR. 50.
[2] November 22, 28, and 29, 1946. For amendments to the draft resolution, see Doc. A/C.6/84, A/C.6/91, and A/C.6/96.
[3] Doc. A/C.6/120.
[4] Doc. A/231.
[5] See Annex I.
[6] Doc. E/330.
[7] 70th plenary meeting, March 15, 1947 (Doc. E/421).
[8] Doc. E/342. It suggested to request the Human Rights Commission to deal with this matter in connection with its consideration of a bill of rights.
[9] Doc. E/AC.7/15.
[10] Doc. E/AC.7/15 Add. 2.
[11] Doc. E/325.
[12] Doc. A/AC.10/41 and A/362.

The draft consisted of 24 articles; three (arts. X, XVI, and XIX) had two different drafts and for one (art. XVII) no proposition was put forward at that time. The draft contained definitions of "protected groups," of acts qualified as genocide and of "punishable offenses," i. e., punishable acts other than those contained in the definition of genocide. It dealt with the persons liable to prosecution, the measures for bringing the culprits to trial, reparation to victims of genocide, and a number of procedural questions relating to the coming into force of the convention, its duration, renunciation, etc.

Acts of genocide, according to the draft, are divided into three main groups: "physical" genocide (acts causing the death of members of protected groups or injuring their health or physical integrity), "biological" genocide (restriction of births), and "cultural" genocide (destruction of the specific characteristics of the persecuted group by various means, including forced exile, prohibition of the use of the national language, destruction of books and similar acts). In addition, attempts to commit genocide, acts preparatory to genocide (for instance, studies and research for purposes of developing techniques of genocide, setting up installation and other implements with the knowledge that they are intended for genocide), direct public incitement to genocide, conspiracy to commit acts of genocide, and willful participation in such acts were also declared to be deemed crimes of genocide. The draft also sought to punish public propaganda tending to provoke genocide.

The draft proposed to punish all persons responsible for acts of genocide regardless of their status as ruler, public official or private person, without regard to command of law or superior order. The contracting parties would be held to implement the provisions of the convention in their municipal legislation and to punish in their courts all offenders. They would have to commit persons guilty of genocide for trial by an international tribunal, if they were unwilling to try them or extradite them to the competent authority or in case the responsible persons acted as organs of the state or with the support and toleration of the state.

In order to prevent the commission of acts of genocide, the draft proposed among other things the disbanding of organizations which participated in acts of genocide. The contracting parties could also invoke the assistance of the organs of the UN in suppressing or preventing acts of genocide.

The draft contained two annexes, viz, a draft statute for an international criminal court and statutes for a special international court to deal with acts of genocide.

4. Action on the draft

The draft was first submitted by the Secretary General to the Committee on the Progressive Development of International Law and its Codification. The Committee's Chairman, after discussion of the draft in the Committee, informed the Secretary General on June 17, 1947,[13] that the Committee felt unable to express its opinion on this matter since the draft, owing to lack of time, was not submitted to the members of the UN for their comments, and therefore such comments were not available.

The draft was distributed among the member states on July 7, 1947. Consultation with the Human Rights Commission, as suggested in the afore-cited resolution of the ECOSOC, was not possible before the fifth session of the ECOSOC, as the Commission was not to meet until August 25, 1947. The fifth session of the ECOSOC which met on July 19, 1947, was thus faced with a situation in which action on the draft appeared improper. On August 4, 1947, the Social Committee adopted, on the basis of various proposals, a draft resolution [14] which was taken over by the ECOSOC on August 6, 1947.[15]

This resolution called upon the member governments to submit their comments as soon as possible and requested the Secretary General in the meanwhile to transmit to the General Assembly the draft prepared by the Secretariat together with the comments received.

In complying with this resolution, the Secretary General sent out once more the draft resolution for comments to the member states [16] and submitted it to the

[13] Doc. A/AC.10/55.
[14] Doc. E/522.
[15] Doc. E/573, pp. 21–22.
[16] Doc. A/362, August 25, 1947. Doc. E/447, dated June 26, 1947, contained extensive comments on the draft convention.

General Assembly, together with the observations which had been received in time.[17]

The General Assembly discussed the question of genocide during its September 23, 1947, meeting and referred it to the Sixth (Legal) Committee.[18] The Committee referred the question to its Second Subcommittee for a proposal as to the procedure to be followed. The Subcommittee proposed to the Sixth Committee a draft resolution [19] to which four amendments were made.[20] The Sixth Committee discussed these documents on November 20, 1947,[21] and adopted a draft resolution [22] which incorporated the Soviet Union, United Kingdom, Belgian, and Norwegian amendments.

The salient point of this draft resolution was the recommendation to the ECOSOC to study the question whether a convention on genocide is desirable and necessary and, if so, whether there should be a separate convention to include the principles of international law recognized in the charter of the Nuremberg tribunal and in its judgment.

To this draft resolution there were suggested a joint amendment by Cuba, Egypt, and Panama, an amendment thereto by China, and an amendment by Venezuela.[23] These amendments were aimed at eliminating the problem of whether a Genocide Convention was necessary and instructing the ECOSOC to proceed with the completion of a convention. They were discussed on November 21, 1947, by the General Assembly.[24] The Assembly incorporated into the draft resolution of the Sixth Committee the joint amendment (Egypt, Cuba, and Panama) and the amendment of China, and adopted by a vote of 38 to 0, with 14 abstentions, Resolution 180 (II).[25]

By this resolution the General Assembly reaffirmed its Resolution 96 (I) and requested the Economic and Social Council to continue the work begun concerning the suppression of the crime of genocide. It informed the Council that it need not await the receipt of observations from all members before commencing its work and requested it to submit a report and the convention to the third regular session of the Assembly.

The sixth session of the ECOSOC (February 2–March 11, 1948) dealt with the foregoing resolution of the General Assembly on February 12 and 13, 1948.[26] It had before it two draft resolutions: one by Venezuela,[27] relating to the establishment of a subcommission to prepare a draft convention and a request to the member states for comments thereon, and another by the United States of America [28] urging the UN members to submit comments on the Secretariat's draft, requesting the Secretary General to prepare a second draft, setting up an ad hoc committee to collaborate with the Secretariat, and requesting the Secretary General to transmit this draft to the third session of the Human Rights Commission and, with the Commission's recommendations, to the seventh session of the ECOSOC.

After a general discussion, the question was refered to the Social Committee, which dealt with it on February 21, 1948,[29] and adopted [30] a draft resolution which was accepted without changes by the ECOSOC on March 3, 1948.[31] By this resolution, the Economic and Social Council established an Ad Hoc Committee ond instructed it to prepare a draft convention on genocide. The draft

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[17] India (Doc. A/401, containing no comments), Haiti (A/401), the Philippines (A/401/Add.1), Venezuela (A/401/Add.1), United States of America (A/401/Add.2), and France (A/401/Add.3).

For an analysis of these and Denmark's comments, see Doc. E/623. For observations on the draft by nongovernmental organizations, see E/621, p. 50.

[18] The Committee dealt with this problem on September 29, October 2, and October 3, 1947 (A/C.6/SR 39 to 42).

The United Kingdom, Venezuela, U. S. S. R., Egypt, and Brazil submitted draft resolutions for the General Assembly (A/C.6/149, A/C.6/151, A/C.6/159, and A/C.6/160).

[19] A/C.6/190 and AC.6/191, Rev. 1.

[20] United Kingdom, Egypt, U. S. S. R., and China (A/C.6/192, A/C.6/198, A/C.6/201, and A/C.6/204).

[21] A/C.6/SR.59.

[22] A/510.

[23] A/512, A/514, and A/573.

[24] A/P. V. 123.

[25] Annex II.

5. The second draft

[26] E/SR. 139 and E/SR.140.

[27] E/663 (for the United Kingdom amendment thereto see E/A C.7/65).

[28] E/662/Add.1.

[29] E/AC.7/SR.37.

[30] On the basis of the Venezuelan proposal, with Brazilian, the United States, and Chilean amendments.

[31] Resol. No. 117 (VI), E/734.

was to be submitted to the Human Rights Commission and, with the recommendations of the latter, to the next session of the ECOSOC. In preparation of the draft, the Ad Hoc Committee was to take into consideration the draft prepared by the Secretariat and comments or drafts submited by members of the UN.

The Ad Hoc Committee was thus faced with a number of terms of reference for its proceedings [32] and had before it, in addition to the Secretariat's draft and the comments of several governments,[33] a draft convention prepared by France.[34] Later the USSR submitted a 10-point document on the Basic Principles of a Convention on Genocide.[35]

The Ad Hoc Committee opened its session on April 5, 1948, and closed it on May 10, 1948. It produced a draft Convention on Prevention and Punishment of the Crime of Genocide,[36] consisting of a premable and 19 articles. The draft included a definition of genocide as a crime under international law (which was not explicitly stated in the Secretariat's draft). It took over from the Secretariat's draft the three kinds of genocide: physical, biological, and cultural, but reduced the number of acts to be regarded as genocide (for instance, by excluding the deprivation of means of livelihood), and weakened the "biological" definition of genocide by substituting "prevention" of births for the former "restriction" of birth. It also cut out certain of the previous draft's provisions relating to other punishable acts such as acts preparatory to genocide, and public propaganda tending to provoke genocide or to make it appear necessary or legitimate. The first draft contained in article IX an obligation of the parties to commit persons guilty of genocide for trial by an international tribunal, if they are unwilling to try them in domestic courts or to grant their extradition to third states or if the acts of genocide were committed by individuals acting as organs of the state or with the support or toleration of the state. The second draft, however, merely stated that the persons charged with genocide shall be tried by a tribunal of the state where the act was committed or by a competent international tribunal, without making it clear what tribunal will be competent and in what instances. The new draft also modified provisions relating to action to be taken by the United Nations by omitting the obligation of the parties to the convention to assist the UN in their measures to suppress or prevent acts of genocide (although such assistance might have resulted directly from the provision of article 2 (5) of the Charter). It totally omitted the stipulation of the foregoing draft relating to reparation of the damage inflicted upon the surviving members of the group subjected to acts of genocide and the obligation of the parties to disband groups and organizations having participated in genocide. Fewer changes were made in the procedural provisions, i. e., those relating to coming into force, duration, and denunciation of the convention.[37]

It is pertinent to point out that the draft was adopted against the vote of the representatives of USSR and with the abstention of the one of Poland. Some members of the majority expressed reservations on certain articles. The representative of the USSR voted against the draft because it included, according to his view, a number of provisions which would weaken the document and because, on the other hand, a number of dangerous crimes were not incorporated therein, among them propaganda aimed at inciting racial and other hatred, preparatory action for the commission of genocide, the disbanding of organizations whose object is to instigate racial and other hatred and to commit genocide. He also scored the lack of a provision excluding "superior order" as defense in genocide acts, and the establishment of international jurisdiction in violation of the sovereignty of the state. The abstention of Poland was based on the alleged inadequacy of the draft which ignored the crimes committed by the Nazis and Fascists, did not include the principle that superior order is no defense, made no provisions for disbanding organizations committing genocide, included political groups among those to be covered by the convention and set up an international tribunal.[38]

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[32] See Doc. E/AC.25/1, E/AC.25/2, and E/AC.25/3 prepared by the Secretariat.

[33] In addition to the above-mentioned comments, the United Kingdom submitted their observations on April 6, 1948 (Doc. E/623/Add.2), the Netherlands on April 15, 1948 E/623/Add.3), and Siam on May 25, 1948 (E/623/Add.4).

[34] E/623/Add. 1.

[35] E/AC.25/7.

[36] E/AC.25/12.

[37] (1) The debates and conclusions of the Ad Hoc Committee are to be found in the summary records of the Committee, Doc. E/AC.25/SR.1 to 28.

(2) For a brief survey, see the report of the Ad Hoc Committee and draft convention (E/794).

[38] For the text of these objections, see E/AC.25/SR.26, pp. 4–8.

In accordance with the aforecited resolution of the ECOSOC the draft was submitted to the third session of the Human Rights Commission which appointed a subcommission to deal with this matter and to prepare a draft resolution on the matter. The Commission discussed it on June 17, 1948; due to lack of time the Commission was not able to consider thoroughly the draft convention and was therefore in no position to make observations concerning its substance. It expressed the opinion, however, that the draft represents an appropriate basis for consideration and action by the ECOSOC and the General Assembly during their coming sessions.[39]

The ECOSOC discussed the draft on August 26 and 27, 1948,[40] and transmitted it without change to the General Assembly.

6. Action by the General Assembly and Its Sixth Committee

The draft convention prepared by the Ad Hoc Committee came up for discussion at the one hundred forty-second plenary meeting of the General Assembly, at which it was decided to refer it to the Sixth Committee.[41]

The Sixth Committee started discussion at its sixty-third meeting held on September 30, 1948, and decided, after a general debate which lasted four meetings (sixty-third to sixty-sixth), to discuss the draft article by article, beginning with article I and leaving the preamble for the last; it was also agreed that the decisions reached on the various articles and all resolutions be referred to a subcommittee with a view of preparing a final text.[42]

There was no clear-cut unanimity in the general debate either on the necessity of a convention or on the body which should draft it. The Belgian representative thought it would be better to draft a detailed "declaration" based on articles III and IV of the draft, inviting the members of the UN to bring their domestic legislation into line with this declaration and to consider such crimes as extraditable offenses, and calling upon the members to report to a later session of the Assembly on the measures they had taken. The main reason for this suggestion was that this would avoid the risk of nonratification; furthermore, since genocide, in his view, could not be committed without the collaboration or the connivance of the government, there was a need for international jurisdiction which, however, did not yet exist. The Belgian representative suggested that the draft be first discussed article by article and that the text be then referred to a drafting committee which should produce either a declaration or a convention.[43]

The view of the Belgian representative was partly supported by that of Chile who thought that a declaration on genocide, unanimously adopted, would have "immense influence and would be approved by world opinion."[44] The representative of the Union of South Africa doubted whether a convention, as contemplated, would be practicable and effective.[45] No less critical of a convention was, as on previous occasions, the United Kingdom representative who felt that "it was a complete delusion to suppose that the adoption of a convention of the type proposed, even if generally adhered to, would give people generally a greater sense of security or would diminish the dangers that at present existed of persecution on racial, religious or national grounds."[46]

The question of which body shall decide finally upon the text to be submitted to the General Assembly, was raised by the proposal of the United States of America[47] not to refer the preparation of the text to the International Law Commission but to proceed with the preparation of such a text for submission to that session of the Assembly, because reference to the International Law Commission would be tantamount to renouncing all hope of adoption of the convention in that session. This proposal was adopted by 38 votes to 7, with 4 abstentions.[48]

The text of the draft prepared by the Ad Hoc Committee was examined by the Sixth Committee from its sixty-seventh to one hundred tenth meeting, held between October 5 and November 9, 1948. The texts of the articles of the convention and of two resolutions (dealing with the question of international

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[39] Doc. E/800, p. 8/9.
[40] E/SR.218 and 219.
[41] A/P.V.142.
[42] A/C.SR.66, p. 7 ff.
[43] A/C.6/SR 65, p. 4/5.
[44] Ibid., p. 9.
[45] A/C.6/SR.64, p. 2.
[46] Ibid., p. 9.
[47] A/C.6/206.
[48] A/C.6/SR 66, p. 7.

jurisdiction and the application of the convention to dependent territories) were then submitted to a drafting committee consisting of representatives of Australia, Belgium, Brazil, Czechoslovakia, China, Cuba, Egypt, France, Iran, Poland, Union of Soviet Socialist Republics, the United Kingdom and the United States of America. This committee submitted on November 23, 1948, its report to the Sixth Committee.[49] The report and the revised text were considered by the Sixth Committee from its one hundred twenty-eighth to its one hundred thirty-fourth meeting, inclusive, during which amendments were submitted by various delegations and a definite text adopted.

The text was submitted to the plenary meeting of the General Assembly together with the report of the Sixth Committee[50] and amendments by the U. S. S. R. and Venezuela[51] and was discussed there during the one hundred seventy-eighth and one hundred seventy-ninth meetings. The representative of U. S. S. R. sought to amend the preamble and to reinstate in the convention provisos dealing with cultural genocide; with the disbandment and prohibition of organizations aiming at incitement to racial, religious, and national hatred and at provoking the commission of genocide; the obligatory application of the convention to dependent territories, and the exclusion of international jurisdiction—matters on which the Sixth Committee had disagreed with U. S. S. R. proposals. The Venezuelan amendment dealt only with declaring the systematic destruction of religious edifices, schools, and libraries of a group to be a crime of genocide.

The Venezuelan representative withdrew his amendments; those of Russia were rejected with varying majorities.

Despite the divergence of opinion on the effectiveness of the convention and its various provisions, the speakers, without exception, were in favor of adopting the convention. Therefore, the text of the convention was adopted unanimously. However, the other two resolutions did not meet with such unanimity: the first (relating to the possibility of establishing an international criminal tribunal) was adopted by a vote of 43 to 6, with 3 abstentions, and the second (concerning dependent territories) by 50 votes to none, with 1 abstention.

PART II. INTERPRETATION OF THE CONVENTION

The general structure of the convention

The text of the Convention on Genocide was approved by the General Assembly on December 9, 1948,[1] and proposed for signature and ratification by the states consists of a preamble and 19 articles.

The preamble confines itself to a reference to Resolution 96 (I), expresses the recognition that genocide has at all periods of history inflicted great losses on humanity, and the conviction that international cooperation is required to liberate mankind from such an odious scourage. The text of the convention proper may be divided, like the preceding drafts, into two parts: a substantive part (arts. I–IX) dealing with the definition, prevention, and punishment of genocide, and a procedural part (arts. X–XIX), treating of signature, geographical areas of validity, coming into force, period of validity, denunciation, and registration.

The construction of the substantive part of the convention is very simple. It starts out in article I with a confirmation by the contracting parties of genocide (whether committed in time of peace or of war) as a crime under international law which the parties undertake to prevent and punish. Thus, the basis is laid for the subsequent provisions: definition of genocide and description of the protected groups (arts. II and III), description of the guilty (art. IV), measures necessary to prevent and punish acts of genocide (arts. V and VII), and the bodies competent for such action (arts. VI, VIII, and IX).

"THE PREAMBLE

"The contracting parties,

"Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

"Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

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[49] A/C.6,288.
[50] A/760, and A/760 corr. 2.
[51] A/766 and A/770.
[1] Doc. A/760.

"Being convinced that, in order to liberate mankind from such an odious scourage, international cooperation is required;

"Hereby agree as hereinafter provided:"

As usual in international conventions, the preamble expresses succinctly the aims and purposes of the convention, viz, the creation of conditions under which the crimes of genocide could be prevented and punished through international operation.

The preamble makes reference to Resolution 96 (I) without specifically incorporating its contents into the aims of the convention. This is not a simple omission but the result of certain divergencies between the resolution and the wording of the convention to which reference was made frequently during the discussions in the Sixth Committee. Among these divergencies is the failure of the convention to include political groups in the "protected groups" and to provide protection against cultural genocide which could be construed as one of the aims of the convention as envisaged in Resolution 96 (I), since it spoke specifically of "losses to humanity in the form of cultural * * * contributions represented by these human groups."

The preamble to the draft prepared by the Ad Hoc Committee had contained a reference to the International Military Tribunal at Nuremberg and its judgment of September 30–October 1, 1946. This reference would have established a connection between the principles laid down there and those contained in the convention. In order to remove it, Venezuela introduced an amendment,[1] whose substance (with a few verbal changes) is embodied in the present text providing for the omission of paragraph III of the Ad Hoc Committee's version. This amendment was finally adopted, as the majority considered that in its Resolution 180 (II) the General Assembly had decided that genocide should be the subject of a separate convention while the International Law Commission would formulate the principles recognized in the Charter of the International Military Tribunal. It was rightly pointed out that, while there were many points in common, genocide—as a new crime—should not be propped by the precedent established in the Charter of IMT concerning crimes against humanity.[2] In fact, there would hardly be any need for two international acts (Genocide Convention and formulation of the principles of international law contained in the Charter of IMT and its judgment)[3] were they to be connected by a reference in the convention.

"ARTICLE I

"The Contracting Parties confirm that Genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."

(*a*) The delegates to the Assembly were not all sure about the usefulness of this article. Some (for instance, the representative of Poland) claimed that it was useless from the legal point of view; others (for instance, the representative of Denmark) were not sure that it might not be advisable to transfer the article to the preamble. The representative of Belgium correctly stated that this article did nothing more than reproduce with one addition the terms of Resolution 96 (I); he felt therefore that there was no need for the latter's reproduction "as if doubt was being cast on the affirmative force of the resolution." The representative of Netherlands considered the article necessary in order to state the main objective of the convention, while others (for instance, the representative of India) felt that the main purpose of this article was to secure the adhesion of all states to a declaration that genocide is a crime under international law. The main difference of opinion was the legal validity of the Assembly's resolution; if this resolution was binding upon members of the UN, article I would obviously add nothing to this resolution and the preamble. In this connection it was pointed out during the debates in the Sixth Committee by representatives of Great Britain and the United States of America [1] that resolutions of the General Assembly were not mandatory [2] but "simply declaratory statements," and that it was therefore necessary to get the agreement of all states to the above principle in a bind-

[1] A/C.6/261.
[2] For the discussions on this topic, see A/C.6/SR 109 and 110.
[3] For the action by the UN on the formulation of these principles, see resolutions of the GA 95 (I) and 177 (II) as well as the deliberations in the International Law Commission, May–June 1949.
[1] A/C.6/SR 68, pp. 6 and 8.
[2] Reference was made to the judgment of the International Court of Justice in case of Corfu, preliminary objections.

ing instrument such as the convention. This view was not upheld by all representatives; Mr. Zourek (Czechoslovakia), for instance, was of the opinion that although the Assembly could not by a resolution adopt new rules of law, its resolutions could reaffirm already existing laws[3] and as such they would be binding upon the members, particularly if they were unanimously adopted. The article was retained mainly to avoid the difficult problem of whether genocide was or was not already crime under international law. The inclusion of such a statement in the preamble would not be sufficient.

(*b*) Article I contains several points. First, it declares genocide to be a crime under international law.[4] The import of this declaration for the signatories is hardly great because any matter dealt with in an international convention must necessarily become a matter of international law. The question is whether this statement implies the transformation of genocide into an international crime in general or for the signatories only. It was stated by the representative of Poland in the Sixth Committee that if genocide was not yet recognized as a crime under international law, the proposed convention would not make it such a crime for those states which did not ratify the instrument, as the convention was law only between the signatory powers. This view, however correct, does not take into account the evolution of international law, which evolution follows ever wider acceptance of rules applied first among several nations and, by and by, becoming a generally recognized principle of international law, as general international law has a tendency to become universal international law.[5] The Charter of the International Military Tribunal was not adhered to by all nations of the world, especially not by the former Axis countries. Nevertheless its principles are being widely recognized and will, in all probability, remain a rule of international criminal law in the future, even if not embodied in another international instrument. The same may well apply to the convention based on the affirmation by the comity of nations of the principle that genocide is a crime under international law. In this connection, the second point of article I is of importance, namely, the equalization of facts committed in time of peace or war—a concept which did not figure in the Charter of the IMT. The third point—the undertaking to prevent and punish genocide—raises the question of the geographical scope of this undertaking, i. e., whether the parties obligate themselves to repress acts of genocide within the territories under their jurisdiction only or wherever it occurs.

The question of universality versus local validity was raised in the first draft. The preamble provided that the parties "pledge themselves to prevent and to repress such acts wherever they may occur." It was the opinion of the Secretary General and the expert involved that universality of repression seemed to have been the intention of the General Assembly's Resolution 96 (I); furthermore, as genocide is by its nature an offense under international law, they considered that the convention would fail of its purpose if the possibility of punishing acts of genocide outside the territories of the parties were ignored.[6] However, every such extension must necessarily be restricted to culprits who can be arraigned before a court of a signatory or an international court, or to action against a nonsignatory state. In the Secretariat's draft such an extension was contained in article VII, insofar as individuals were concerned and in article XII, insofar as action by UN was envisaged. The present text does not contain such a reference in either the preamble or in the respective articles (arts. IV and VIII). The position at present is that the only action relating to crimes committed outside the territory of the contracting parties is by organs of the UN within the scope of their general competence.[7] This is the result of the nondoption of the principle of universal repression and of the fact that the scope of the powers of the organs of the UN was not enlarged by the convention.[8]

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[3] Reference was apparently made to the resolutions concerning the principles of the Charter of the International Military Tribunal and its judgment (see Preamble, footnote (3) above).

[4] For the discussions see A/C.6/SR 67 and 68.

[5] For the distinction between particular, general and universal international law see International Law, A Treatise, by L. Oppenheim, Vol. I, VI edit. p. 5, and the literature in footnote (1).

[6] E/447, p. 18.

[7] For possible exceptions, see art. V.

Universal repression is applied in cases of piracy. By a customary rule of the Law of Nations every maritime state has the right to punish the pirates. The vessels of all nations may in the open sea chase, attack, and seize the pirate, and bring him home for trial and punishment by the courts of their own country (see Oppenheim, Vol. I, p. 565; Green H. Hackworth, Digest of International Law, Vol. II, p. 681, Washington, 1941).

[8] For details, see art. VIII.

"ARTICLE II

"In the present convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

"(a) Killing members of the group;

"(b) Causing serious bodily or mental harm to members of the group;

"(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

"(d) Imposing measures intended to prevent births within the group;

"(e) Forcibly transferring children of the group to another group."

(*a*) This article contains a definition stricto sensu of genocide. Contrary to Resolution 96 (I) which defined genocide as "a denial of the right of existence of entire human groups" and to the Secretariat's draft, the convention does not contain a definition of genocide which could be put in a few words, as, for example, "destruction of human groups" or "an act directed against a human group with the intent to destroy it or prevent its preservation or development." Although such a simple definition would be useful from the point of view of legal systematics, it would lend itself to various interpretations and, in addition, could be expanded to include a number of acts which are at present part of the laws of war, of the protection of human rights or minorities, and of similar protective measures. In order to avoid such possibilities, the convention does not carry a definition of genocide[1] but an enumeration of acts which are considered to be genocde for the purposes of the convention.

Article II defines genocide as any of the five acts, enumerated therein committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such.

The main characteristic of genocide is it object: the act must be directed toward the destruction of a group. Groups consist of individuals, and therefore action must be in the last analysis be taken against them. However, these individuals are important not per se but only as members of the group to whom they belong.

The acts enumerated in article II become acts of genocide on strictly defined conditions only. First, there must be the intent to destroy a group in whole or in part; therefore, acts resulting in such destruction but committed without such an intent would not fall under this definition. The answer as to whether genocide was committed or not in such cases as dropping a bomb inadvertently, or similar instances, is simple. More complicated is the question of intent in regard to the subjective appraisal of the guilty, namely, whether the culprit intended to destroy the group or the destruction was achieved without such intent, simply as a result of an otherwise intentional action. The problem of intention would also be involved in the case of destruction of a group on orders, because those who destroyed the group could claim that no intention could be ascribed to them.[2] The majority of the Commission was, however, of the opinion that there was no genocide without intent and that, if intent was absent, the act would become simple homicide.[3] Therefore, according to the wording of article II, acts of destruction would not be classified as genocide unless the intent to destroy the group existed or could be proven regardless of the results achieved.

Second, not all groups are protected by the convention. Excluded are specifically political groups, but also economic and similar groups.[4] The exclusion of political groups is a deviation from the General Assembly Resolution 96 (I). It is noteworthy that at first[5] the Sixth Committee had decided to retain the political groups among those protected by the convention. These groups were later omitted on a joint proposal of Iran, Egypt, and Uruguay, when the report of the Drafting Committee was discussed in the Sixth Committee, by a vote of 22 to 6, with 12 abstentions.[6] The main reason was the contention that political groups were not stable enough; that their inclusion would be a serious obstacle to the ratification of the convention by a large number of states and that the inclusion of political groups might enable some international authority to intervene in the domestic strife of a country and bring the UN into the domestic

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[1] Such a definition was proposed in the French amendment A/C.6/211.

[2] See Mr. Morozov's (Russian representative) remarks in A/C.6/SR 73. For the question of superior orders, see art. IV below.

[3] See especially Mr. Gross, ibid.

[4] The United States amendment (A/C.6/214) included such groups.

[5] Vote on October 15, 1948, A/C.6/SR. 75.

[6] A/C.6/SR 128, p. 13. Those who had previously favored the exclusion (the U. S. S. R. and others) abstained; cf. A/C.6/SR 74.

political struggle of every country.[7] Instead, the Sixth Committee added "ethnical" groups to "national" and "racial" in order to avoid possible interpretation of "national" as related to "political."[8]

According to the draft of Ad Hoc Committee, genocide must have been a "deliberate" act of destruction of a group. A Belgian amendment[9] suggested the suppression of the concept of "premeditation" on the ground that it was rendered unnecessary once particular intent was included in the definition of genocide.[10] The word "premeditation" would relate to the idea of "scheming and conspiracy" and might exclude those who through negligence or omission were guilty of genocide, and create a differentiation between the instigator and the agents. By excluding the word "deliberate" the authors of the convention indicated that the psychological moment of plotting was not necessary for classifying an act of intended destruction as genocide. However, "premeditation" was retained in subparagraph (c) dealing with the infliction of conditions of life calculated to bring about the physical destruction of a group in whole or in part. The word "deliberately" was included there to denote a precise intention of the destruction, i. e., the premeditation related to the creation of certain conditions of life.[11]

Third, the destruction of the group "as such" must be intended. The draft of the Ad Hoc Committee specified that the intended destruction must take place "on grounds of the national or racial origin, religious beliefs, or political opinion of its (the group's) members"; in other words, in addition to the intention of destruction, there must also be a specific motive lying in the peculiar character of the group. Thus, the intention to destroy a group would not suffice if the motives for it were other than national, racial, or religious, for instance, if the destruction was carried out in the conduct of a war, or with the intention of robbery, or for motives of profit, or the like. There was a sharp difference of opinion among the delegates as to the advisability of this restriction. The Venezuelan delegation introduced an amendment[12] aiming at the elimination of the above-quoted phrase and substituting for it the words "as such" in order to avoid the possibility of the culprits claiming that the crime was committed for other reasons than those contained in the group itself and to underscore that the essential element in the intent was the destruction of a group as such. Although the Venezuelan representative contended that his amendment omitted the enumeration of the motives, but reintroduced the motives of the crime,[13] several delegations voted for or against this amendment because it did not include the motives of the crime. A remark was to be included in the report of the Sixth Committee to the effect that in taking a decision on any proposal the committee "did not necessarily adopt the interpretation given by its author."[14] Thus, the question of whether motives of the crime are included in the text of article II or not will remain a matter of interpretation for every state and/or in accordance with article 9.[15]

(*b*) Deviating from the Ad Hoc Committee's draft, the convention considers as genocide acts aimed not only at the total but also the partial destruction of a group. This change was proposed by Norway[16] and supported by Venezuela and U. S. S. R.,[17] but opposed by Belgium and was adopted by 41 votes to 8, with 2 abstentions.[18]

The crime of genocide is not conditioned upon the factual destruction of a group in whole or in part but on the intent to achieve this aim. Of the five acts listed in article II, three (the first two and the last one) explicitly refer to action against individuals, whether in separate or in mass cases. The Ad Hoc Committee had correctly expressed the view that the death of an individual could

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[7] A/C.6/SR 69, SR 128. The inclusion of this group in the earlier drafts was considered as one of the main obstacles to agreement on international jurisdiction (A/C.6/SR 129, p. 7).

[8] A/C.6/SR 73. About the meaning of "ethnical" groups see A/C.6/SR 75, p. 9.

[9] A/C.6/217.

[10] A/C.6/SR 72, p. 8.

[11] A/C.6/SR 82, p. 3.

[12] A/C.6/SR 231.

[13] A/C.6/SR 77, p. 4.

[14] A/C.6/SR. 77, p. 10.

[15] As the Chairman of the Committee put it, the subject of a vote was the text; its interpretation would be a matter for the several governments when ratifying and applying the convention.

[16] A/C.6/228. A French amendment (A/C.6/224) proposed to include (after "group") the words "or against an individual as a member of a human group." This amendment was withdrawn since in view of the French representative, the Norwegian amendment expressed the same fundamental idea (A/C.6/SR 73).

[17] A/C.6/SR 69 and 73.
/C.6/SR 73.

be considered as an act of genocide if it was part of a series of similar acts aimed at the destruction of the group to which that individual belonged.[19] The same is true of the acts listed in subparagraphs (b) and (c), if they are aimed at the same end.

According to the present wording, the aim need not be the total destruction of the group. Thus, genocide is not characterized by the intent to destroy a whole group but to eliminate portions of the population marked by their racial, religious, national, or ethnic features. The definition of a "group" as an assemblage of persons regarded as a unit because of their comparative segregation from others would leave open the question whether the aim must be the destruction of the group in the whole of a country, in a part of it, in a single town, etc. The addition of the phrase "in part" undoubtedly indicates that genocide is committed when homicides are done with a connecting aim, i. e., directed against persons with specific characteristics. Therefore, the intent to destroy a multitude of persons of the same group must be classified as genocide even if these persons constitute only part of a group either within a country or within a region or within a single community, provided the number is substantial because the aim of the convention is to deal with action against large numbers, not individuals even if they happen to possess the same characteristics. It will be up to the court to decide in every case whether such intent existed.

(*c*) The five acts enumerated in article II raise a number of difficulties of interpretation. The act of "killing" (subpar. (a)) is too clear to evoke divergencies of opinion as to its meaning, but what is "serious" harm is already a matter of interpretation to be decided in each instance on the basis of the intent and the possibility of implementing this intent by the harm done. The same is true of subparagraph (c): it is impossible to enumerate in advance the "conditions of life" coming under the prohibition of article II; the intent and probability of the final aim alone will determine in each case whether an act of genocide has been committed or not. An instance coming under subparagraph (c) would be the putting of a group of people on a regimen of insufficient food allocation, reducing required medical attention, providing insufficient living accommodations, etc.—provided these restrictions are imposed with the intent to destroy the group. Subparagraph (d) may in practice give rise to the problem whether the intention must be to prevent all births within the group or it is sufficient that it relates to some births only. Although this subparagraph speaks not of restriction but prevention, it must be admitted that the intent of partial prevention suffices since the requirement of total prevention would conflict with the definition of genocide as relating not only to a whole group but also to a part of it.

The measure imposed need not to be the classic action of sterilization; separation of the sexes, prohibition of marriages and the like may achieve the same results. As stated above, the factual extent of prevention should be of no import once it is established that it was imposed on members of any of the protected groups only. This applies also to subparagraph (e).

(*d*) As indicated above, only the five acts specifically enumerated in article II were to be considered as genocide, provided they were committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. The convention did not take over article III of the draft of the Ad Hoc Committee dealing with "cultural genocide." Instead it included, on a Greek motion,[20] point 5, dealing with forced transfer of children (as was envisaged in the Secretariat's draft) as one of the acts of cultural genocide. The omission of article III of the Ad Hoc Committee's draft was considered to represent a departure from the wording of the General Assembly's Resolution 96 (I) which spoke of cultural contribution lost as a result of acts of genocide; the deletion of this article was decided upon by a vote of 25 to 16 with 4 abstentions, 13 delegations being absent during the vote.[21] Judging by the delegations which voted in favor of excluding cultural genocide, the main reasons were that "cultural" genocide was too indefinite a concept to be included into a convention; that the difference between mass murder and the closing of libraries was too great; that cultural genocide falls rather in the sphere of protection of minorities. On the other hand, the Sixth Committee extended the scope of the provisions of the

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[19] The Committee decided however, not to state this view in its report to the Economic and Social Council in order that the Council, and later the General Assembly, might be free to give any interpretation they deemed desirable to that provision (A/C.6/SR 81, p. 8).

[20] A/C.6/242.

[21] A/C.6/SR 83, p. 22.

Ad Hoc Committee's draft by replacing the words "impairing the physical integrity of members of the group" with "causing serious bodily or mental harm to members of the group." This was done on a United Kingdom proposal which considered the wording of the Ad Hoc Committee too vague.[22] and Chinese-Indian amendments [23] to cover acts committed through the use of narcotics.

"ARTICLE III

"The following acts shall be punishable:

"(a) Genocide;
"(b) Conspiracy to commit Genocide;
"(c) Direct and public incitement to commit Genocide;
"(d) Attempt to commit Genocide;
"(e) Complicity in Genocide;"

(*a*) It is obvious that the purposes of punishing and preventing genocide could not be achieved by declaring only those acts punishable which constitute genocide in accordance with the provisions of article II. Some persons are involved in group destruction, by cooperating with those directly guilty of genocide or in accomplishing acts preparatory to it. Among them are those involved in a common design of annihilation, by planning, scheming, giving orders or otherwise preparing for, or assisting in, the commission of the acts. There are also persons inciting to genocide or making attempts to commit such acts. It was obvious that all such culprits must also be included in the group of persons subject to punishment.

Article III lists therefore as punishable acts not only genocide, but also conspiracy to commit it, complicity therein as well as attempt and direct and public incitement to commit genocide. While the punishment of conspiracy [1] and of attempt to commit genocide did not provoke any controversy because of their unambiguity,[2] the provisions relating to incitement and complicity were the subject of dissensions and considerable discussions.

The draft of the Ad Hoc Committee proposed to make incitement punishable whether committed "in public" or "in private." Furthermore, the draft explicitly made incitement punishable regardless of "whether such incitement be successful or not."

The present wording of article III excludes incitement "in private" because it was felt that such incitement was not serious enough to be included in the convention. It further restricts "incitement" to cases of "direct" action, i. e., incitement which calls for the commission of acts of genocide, not such which may result in such commission. On the other hand, the omission of the words "whether such incitement was successful or not" does not preclude the punishment of acts calling for the commission of genocide which did not result in its commission, since incitement is generally punishable without regard to the results, unless only successful incitement is declared punishable.[3] Nor would there seem to be a difference between the Ad Hoc Committee's wording "direct incitement in public" and the adopted version of "direct and public" incitement because in both instances the same two essential conditions must be fulfilled: it must be both direct and public.

(*b*) Some delegations [4] felt that the draft did not cover sufficiently acts preparatory to genocide. The U. S. S. R. delegation introduced an amendment [5] proposing to reinclude in the present article III preparatory acts in the form of studies and research for developing the technique of genocide and all forms of public propaganda aimed at provoking the commission of genocide or at inciting racial, national, or religious hatred, which appeared in article II of the Secretariat's draft, although in a somewhat different wording. It was, however, felt that such acts as setting up installations, manufacturing, or supplying of

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[22] A/C.6/222 and Corr. 1.
[23] A/C.6/232 and A/C.6/242.
[1] "Conspiracy to commit genocide" means an agreement among a number of people to commit any of the acts enumerated in art. II even if these acts were never put into operation.
[2] Although "conspiracy" is an Anglo-Saxon legal notion its meaning became well known through its introduction in the Charter of the IMT and the judgments based on this Charter and the Allied Control Council (for Germany) Law No. 10.
[3] This was the explicit view of the British and Polish representatives (A/C.6/SR 85, p. 15).
[4] Especially the U. S. S. R., Denmark, and Holland.
[5] A/C.6/215. In this case, as in most others, the same proposals were made during the Ad Hoc Committee's deliberations. (See E/794, p. 22/23.)

substances for the future commission of genocide were acts of complicity [6] and that if other preparatory acts took a definite form they would be covered by conspiracy or attempt.[7] The Committee did not want, however, to include preparatory acts as such (if they did not lead to genocide) among those punishable, mainly because they are vague and would militate against the adoption of the convention by many states; the principle of inclusion of such acts was rejected by 29 votes to 11 with 5 abstentions.[8]

(*c*) In order to strengthen the preventive effect of the convention, the amendment of U. S. S. R. also proposed to reintroduce in a stronger wording [9] the provision of article XI of the Secretariat's draft providing for the disbanding of organizations aiming at inciting racial, national, or religious hatred or the commission of genocide.[10] This amendment was opposed on the basis that it would give to the administration too much power over organizations; that it was too far-reaching and that it must be left to the states to take the measures necessary to prevent and prohibit genocide. It was also indicated that incitement to genocide was covered by article IV and the courts deciding upon the case could declare the organizations illegal and disband them.[11]

The term "complicity" was taken over from the Ad Hoc Committee's draft, in which it was understood to refer to accessorship before and after the act and to aiding and abetting in the commission of any of the crimes enumerated in the convention.[12] In deviation from the Ad Hoc Committee's draft, however, the present wording restricts complicity to acts of genocide only. Thus complicity in attempt and incitement are excluded from punishment. The reason was that attempt and incitement were only preparatory acts to genocide and neither conspiracy nor complicity therein represented sufficiently clearly defined criminal acts.

(*d*) One of the difficulties in applying the convention will undoubtedly be the terminology. As indicated above, the term "conspiracy" is alien to many legal systems. But even the exact meaning of such accepted terms as "incitement," "attempt," "complicity," and others are subject to certain variations in different legal systems. This is especially true if we take into consideration the variety of legal systems represented among the members of the United Nations. It was on the basis of this differentiation that the Swedish representative made the following statement:

"The discussion at the beginning of this meeting seems to me to have shown that the significance of the terms corresponding to the French and English expressions here in question—incitement, conspiracy, attempt, complicity, etc.—is subject to certain variations in many systems of criminal law represented here. When these expressions have to be translated in order to introduce the text of the convention into our different criminal codes in other languages, it will no doubt be necessary to resign ourselves to the fact that certain differences in meaning are inevitable. It would therefore be advisable to indicate in the Committee's report that article IV of the convention does not bind signatory states to punish the various types of acts to a greater extent than the corresponding acts aimed at the most serious crimes, as, for example, murder and high treason, already recognized under national laws." [13]

"ARTICLE IV

"Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

(*a*) This article describes the circle of persons liable for prosecution under the convention. The only change in comparison with the draft of the Ad Hoc

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[6] A/C.6/SR 86, p. 5. Since complicity is punishable in acts of genocide only, the mentioned acts would become punishable—according to this interpretation—only if genocide was committed.

[7] Ibid., p. 7.

[8] A/C.6/SR 86, p. 14.

[9] The Secretariat's draft dealt with organizations which participated in acts of genocide and assimilated crimes while the U. S. S. R. amendment would apply this rule to organizations aiming at inciting racial, national, or religious hatred or the commission of acts of genocide.

[10] The Ad Hoc Committee had rejected such a proposal made by the Polish delegate (E/794, p. 40).

[11] A/C.6/SR 106, p. 5.

[12] E/794, p. 21.

[13] A/760, p. 4 and A/C.6/SR 84, p. 7.

Committee is the replacement of "heads of state" with "constitutionally responsible rulers," in order to exclude prosecution of monarchs who—as a rule—cannot be prosecuted under the basic laws of the respective countries.[1]

Article IV stipulates that persons committing acts punishable under the convention shall be punished regardless of whether they are "public officials or private individuals." The term "public officials" is not very precise since there are persons acting on behalf of the state without being officials stricto sensu, as, for instance, Members of Parliament. This category could be of great importance in case of acts committed on the basis of laws enacted by a parliament or with the knowledge and assent of such body. The whole tenor of article IV is such that there could be no doubt as to the intention of the drafters to include such persons among those responsible.[2] However, the Swedish representative made in the Sixth Committee the following statement which was not repudiated:

"I must point out that the discussion that has taken place has in no way clarified the position of Members of Parliament under the article we have just adopted. This question raised by the Swedish delegation consequently remains unanswered. For our part, we conclude that no absolute obligation could be imposed by article V in this regard."[3]

(*b*) The inclusion of "constitutionally responsible rulers" among those responsible for genocide explicitly excludes the usual plea of "acts of state." There remains, however, the problem of the pleas of "superior order" and of command of law, which played such an important part in the war crime trials.

The editorial in the "United Nations World," January 1949, entitled, "The World of the Free" states that "the important thing about the Genocide Convention is that it specifically puts the responsibility for the crime on the individual, and that once the convention is ratified, no one will be able to hide behind the pretext of 'higher orders'."

This interpretation would seem to be too sweeping in view of the following considerations:

The Ad Hoc Committee's draft had excluded the reference to the nonadmissibility of the plea of superior order (article V) on the apparent grounds that genocide could not take place without a motive and that the exclusion of these pleas of superior orders might leave room for injustice to a person carrying out orders; other reasons against the exclusion of the plea related to the variety of the rule in the different legal systems and the necessity to leave the matter to the judgment of the court in the light of the usual rules of law.[4]

The amendment introduced by U. S. S. R.[5], insofar as it related to article 5 of the draft (present article IV), suggested to reinclude the words "command of the law or superior orders shall not justify genocide." The amendment was rejected by 28 votes to 15 with 6 abstentions.[6] Some delegations[7] felt that this rule would conflict with the provisions of some domestic criminal legislation; if the latter should have to be brought into harmony with the convention, there might be serious obstacles for ratification. In addition, there was the problem of interpreting article IV in the light of articles II and III. The question arose whether an official or soldier, acting under orders, could be found guilty of intentional destruction of the group as such (as required under the definition of genocide). Had the convention contained a proviso similar to the one proposed by the U. S. S. R., it would have excluded the "intent" in cases of subordinates (and probably required editorial changes to bring both somewhat conflicting provisions into harmony). Since the proviso was not taken over, those cases cannot be decided upon the existing wording of the convention. It would seem that ordinarily no intent could be ascribed to those just fulfilling superior orders because intent implies initiative. However, command of law or superior order would not be a justification in such cases where the guilty was not only a tool but participated in the "conspiracy to commit genocide" or where, although acting under orders, he was in a position to use his own initiative and thus act with the intent to destroy the group. The noninclusion of a proviso relating to superior orders thus leaves the tribunals applying the convention the freedom

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[1] For the discussion see A/C.6/SR 92.
[2] The interpretation put on this article by the representative of Panama as meaning "government authorities or individuals" is undoubtedly correct (A/PV 179, p. 12).
[3] A/C.6/SR 96, p. 13, and A/760, p. 5.
[4] E/AC.25/SR 18.
[5] A/C.6/215, Rev. 1.
[6] A/C.6/SR 92, p. 17.
[7] For instance, the Belgian (A/C.6/SR 92, p. 3), Venezuela (ibid. p. 7).

of interpreting it in accordance with the domestic legislation and the specific circumstances of the case.[8]

The above conclusion may conflict with article 8 of the Charter of International Military Tribunal, and the two resolutions of the General Assembly [9] reaffirming the principles established in the Charter of the Nuremburg Tribunal and its judgment. Nontheless the clear intention of the body responsible for the wording of the convention as described above, and the fact that it was the feeling of this body that the Nuremburg trials referred to crimes against humanity only insofar as they were connected with crimes against peace,[10] must be taken into account.

(*c*) Quite different is the question of "command of law." As indicated during the Ad Hoc Committee's meetings,[11] domestic law could never be invoked as a defense for nonfulfillment of an obligation under an international convention. Therefore, if under a convention a state undertook certain obligations, the domestic law would not be a defense for failure to fulfill such obligations.

(*d*) In connection with the punishment to be imposed for acts punishable under the convention there arose the problem of the material consequences of acts of genocide. As stated above, the Secretariat's draft contained a special proviso in regard to reparation, but this clause was omitted in the Ad Hoc Committee's draft. The British submitted an amendment to article V of the draft,[12] suggesting that such acts committed by individuals acting on behalf of the state be considered a breach of the convention, and that such cases be submitted to the International Court of Justice, which would order their cessation and the payment of reparation to the victims. However, this amendment was rejected by a very slim majority of 24 to 22,[13] apparently on the basis of the contention of certain delegations, that the purpose of the convention was to suppress genocide, and any other responsibility than criminal would be out of place in such a document.[14]

The foregoing certainly does not exclude damage suits against persons convicted of acts punishable under the convention whenever such suits are permitted under the general law of the state. Nor would it prevent the state from providing for such compensation in enacting legislation provided for in article V. This article however, does not impose on the state either an obligation to pay damages or to provide for them in the legislation.

"ARTICLE V

"The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of Genocide or any of the other acts enumerated in Article III."

(*a*) The present article contains one of the basic obligations the parties to the convention have undertaken, viz, to enact the necessary legislation to give effect to its provisions and in particular to provide effective penalties for persons guilty of genocide and other acts punishable under the convention.

The article underwent several changes. The Ad Hoc Committee's draft contained only an obligation to enact legislation to give effect to the provisions of the convention. On the basis of the U. S. S. R. proposal for amendments,[1] the Sixth Committee adopted on November 6, 1948, this article in a wording [2] which would have restricted the obligation of the parties to that of providing "criminal penalties" for the authors of such crimes to give effect to the provisions of this convention. It appeared later that the drafting was not in accordance with the adopted amendment and the Sixth Committee changed the wording so as to stipulate a general obligation to give effect to the provisions of the convention and in particular to provide effective penalties for the perpetrators of the crime.[3]

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[8] Some delegations which voted against the U. S. S. R. amendment did so only because of its incompability with domestic legislation. Others (Netherlands, Brazil, the United States of America) because they felt that it was premature to take a decision on this case before the Committee on International Law has defined the scope of this principle which was embodied in the Charter of the IMT. (See A/C.6/SR 92, p. 17.)

[9] See annexes III and IV.

[10] Control Council Law No. 10 does not contain this restriction but this law could hardly be regarded as establishing a rule of valid universal international law.

[11] E/AC.25/SR 18.

[12] A/C.6/236.

[13] A/C.6/SR 96, p. 9.

[14] A/C.6/SR 95, p. 11 ff. For further discussion on the problem of reparation, see the comments on art. IX below.

[1] A/C.6/215, Rev. 1.

[2] A/C.6/254.

[3] A/C.6/254, Rev. 1.

In the final version adopted by the Drafting Committee it acquired the present wording which did not change anything in the substance, as compared with the one just cited.

(b) As it stands, the article does not afford room for much controversy. It is obvious, however, that it will be up to the several parties to the convention to decide in detail what penalties are to be considered as effective in every instance. In practice, the measures for the punishment of those guilty of genocide and responsible for other acts punishable, may and will be different in the various states. Such differences may refer not only to the measure of penalty for "genocidists" proper but also in the gradation of penalty for accomplices, those responsible for attempt, encouragement, and direction of acts of genocide. Some of these divergencies are in part unavoidable in view of the discrepancies in the penal systems of the states the world over, especially in relation to the measure of responsibility and punishment of conspirators, accomplices, and those guilty of attempts to commit a crime as contrasted with the main culprits.

The convention does not contain an explicit obligation to enact uniform legislation. Nonetheless, the states concerned are not free to provide any penalty they deem fit, although they undoubtedly may adapt the penalty for the new crime to the provisions of their general penal system. The obligation under this article is one falling under article IX and insufficient penalties may well be construed as representing a violation of this obligation, giving rise to a dispute between the contracting parties. It must be assumed that, despite the lack of an explicit provision, the idea of uniformity is inherent in an international regulation of a domestic matter,[4] although—in view of the lack of such an explicit provision—it need not go so far as to make the regulations to be issued under article V uniform in all details.

(c) The obligation under article V may involve not only the enactment of new articles in the penal code of the parties to the convention but even more far-reaching changes, for instance, in regard to the concept of conspiracy which is not known to many criminal systems. The same may be true of the punishment of attempt at acts which were not committed.

Article V does not stipulate the time within which the legislation has to be put into effect. This is a serious deficiency as it may give the signatories an excuse for postponing the enactment. Nonetheless, this question did not arise during the debates. It was apparently felt that a state undertaking such an obligation will comply with it in good faith. Should, however, a party procrastinate it, another party to the convention may make use of article IX.

"ARTICLE VI

"Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

(a) Since the preceding article established the obligation of the states to provide for effective punishment for the acts dealt with in the convention, there could be no doubt as to the primary jurisdiction of domestic courts. It was evident from the very beginning, however, that domestic jurisdiction was not sufficient, especially in cases of heads of state or high officials, as the local authorities and courts might or would ordinarily be in no position or might or would be unwilling to prosecute and punish them. This consideration led the authors of the first draft to provide for international jurisdiction in certain specified cases, as stated in part I. There was, however, opposition to this provision based in part on the unwillingness of some states to agree to international jurisdiction, in part on the consideration that the judgments of such courts could not be implemented, and in part on the nonexistence of international criminal tribunals. The result was the version of the Ad Hoc Committee which included a reference to a competent international court, leaving open the question of what this court would be and in what instances it would act.

During the discussion of this article in the Sixth Committee various amendments were submitted. Some (U. S. S. R., Belgium) suggested the deletion of any reference to international jurisdiction; others (Great Britain) proposed

[4] The representative of Brazil in the Sixth Committee contended that the General Assembly's Resolution 96 (I) contained the idea of uniform punishment for genocide on the national plane, the states undertaking to make all the necessary changes in their domestic legislation to attain that objective (A/C.6/SR 80, p. 9).

to replace it with a provision for a recourse to the International Court of Justice. Iran, France, and the Netherlands suggested the establishment of a special international tribunal competent to deal with certain or even all acts of genocide.[1] In between was the proposal of the United States of America that the jurisdiction of the international tribunal be conditional on its finding that the respective stated failed to take appropriate action or failed to impose punishment upon the guilty. The decisions of the Sixth Committee on this question were considerably complex. At first a decision was taken to eliminate any reference to international tribunals, with 23 votes, against 19, and 3 abstentions.[2] Then a draft resolution (for the General Assembly was accepted, by a vote of 32 to 4 with 9 abstentions, to the effect that the International Law Commission be requested to study the desirability and possibility of establishing an independent international criminal court for the punishment of persons guilty of genocide or of a criminal chamber of the International Court of Justice.[3] This resolution was interpreted by some delegates[4] as having a symbolic value only, as a study for a day in the more or less distant future, while others[5] considered it an important stage toward the constitution of an international criminal court.

The reference to an international court, as it stands now, was included by the Drafting Committee in the amended version of its draft.[6] The first version[7] of the Drafting Committee's report reproduced the text of article VI as adopted in the Sixth Committee; it was amended on the basis of a United States amendment.[8] This amendment was based on the consideration that a number of representatives had voted against any mention of international jurisdiction because of the provision of the draft which extended protection to political groups. Another reason for the amendment was that some delegations which were in favor of establishing an international penal tribunal voted against the original text of article VI as adopted by the Ad Hoc Committee because they did not want to bind themselves before the statute and the powers of such a tribunal were known. The elimination of political groups and the introduction of optional and conditional jurisdiction dispelled those fears.[9]

An additional motive for the reinstatement of the reference to international jurisdiction was the consideration that since a resolution to study the possibility of such jurisdiction was adopted and it might become a reality in the future, it would be better to insert a reference to such a tribunal in the convention in order to avoid later the necessity of going through the procedure of amending the convention.[10]

The final text, as it stands now, was accepted by the Sixth Committee (on the basis of a French sponsored and Belgian seconded change in the United States of America amendment) by a vote of 29 to 9 with 5 abstentions.[11] and by the General Assembly. The Assembly also adopted the resolution relating to the study, by the International Law Commission, of the question of an international criminal jurisdiction, as reproduced in annex IX.

(*b*) As the article now stands, it may appear that, except for international jurisdiction, only the courts of the state in whose territory the criminal acts were committed are competent. It was indicated during the discussion[12] that in other cases of international crimes, as for instance piracy, the principle of primary universal repression was applied,[13] i. e., the court of the state which arrested the culprit was competent, regardless of the place where the criminal act was committed, unless a request for extradition by the state where the offense

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[1] The representative of France based his proposal on the often made contention that genocide could rarely be committed without the participation and tolerance of the state. In the words of the representative of the Philippines it would be "paradoxical to leave punishment to the same state" (A/C.6/SR 97, p. 9).
[2] A/C.6/SR 98, p. 11.
[3] A/C.6/271.
[4] Haiti, Venezuela.
[5] Brazil.
[6] A/C.6/289, Rev. 1.
[7] A/C.6/289.
[8] A/C.6/295.
[9] A/C.6/SR 129, p. 7.
[10] A/C.6/SR 130, p. 5.
[11] A/C.6/SR 130, p. 16.
[12] See A/C.6/SR 100.
[13] This question was also discussed in the Ad Hoc Committee when it considered the fundamental principles of the convention. It was rejected by four votes against two, with one abstention (E/794, p. 32/33).

was committed was received.[14] The representative of Iran introduced an amendment, suggesting that another paragraph be added to the present article, providing that persons liable for the crimes coming under this convention may also be tried by tribunals other than those of the states in the territory of which the acts were committed if they have been arrested by the authorities of such states, and provided no request has been made for their extradition.[15] If adopted, this amendment would have made it possible to obviate one of the difficulties involved in the application of this article, viz, the definition of the place where the crime was committed. In many instances such as radio broadcasts directed to another country, publications printed in one country and destined for another, conspiracy to commit genocide elsewhere, and so on, it is not simple to establish the actual place of the commission of the crime.

(c) It became obvious during the discussions in the Sixth Committee following the submission of the text by the Drafting Committee, that article VI was not worded properly, viz, that it did not provide i. a. for punishment by the state of its own citizens who committed punishable acts abroad and found asylum in their own country. Usually states do not extradite their own citizens: if the provision of article VI were to be interpreted literally, such culprits would go on unpunished.[16] It was further pointed out that the place of crime was not the proper criterion in cases where the crime was committed against nationals of one state or the territory of another state and the guilty was arrested in the territory of the state which the victims were nationals: in such instances it would be proper to grant jurisdiction to the state when the guilty was apprehended.[17] However, there was a reluctance on the part of the committee to amend the article. Instead it was first agreed (in accordance with the Indian proposal) to include in the report of the rapporteur a statement to the effect that none of the provisions of article VI affects the right of any state to bring any of its nationals to trial before its own courts for acts committed outside its territory.[18] In view of the objection raised by the Swedish representative and following very extensive discussions and a compromise draft by Sweden,[19] it was agreed to insert in the Committee's report a statement to read:

"The first part of article VI contemplates the obligation of the state in whose territory acts of genocide have been committed. Thus, in particular it does not affect the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside the state." [20]

The legal validity of this statement is, however, open to question. It was the opinion of many delegations that "Article VI was not intended to solve questions of conflicting competence in regard to the trial of persons charged with genocide; that would be a long process. Its purpose was merely to establish the obligation of the state in which an act of genocide was committed." [21] However, as the chairman rightly stated, the report of the Sixth Committee could only state that a majority of the committee placed a certain interpretation on the text; that interpretation could not be binding on the delegations which had opposed it.[22] "Interpretations of texts had only such value as might be accorded to them by the preponderance of opinion in their favor." [23] It is obvious that the convention would be open to interpretation by the parties thereto; should disputes relating to the interpretation arise, the ICJ would be called upon to decide what is the correct interpretation. In dealing with such problems, the Court could obviously use the history of the disputed article.[24]

On the basis of article VI the states are thus obliged to punish persons charged with the commission of acts coming under the convention insofar as they were

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[14] It should be noted that the Convention on Suppression of Counterfeiting Currency of April 20, 1929 (L. O. N. Treaties Series 112, p. 371) provided that states which recognize the principle of the prosecution of offenses committed abroad shall punish foreigners who are guilty of this offense in the same way as if the offense had been committed in their country. This obligation is not incumbent under this convention, as seen below, although the possibility of punishment is not excluded.

[15] A/C.6/218. It was rejected by 29 to 6 votes, with 10 abstentions.

[16] The Indian representative called attention to this situation (A/C.6/SR 129, p. 11).

[17] This was the suggestion of the Swedish representative (A/C.6/SR.130, p. 3). For the text of the Swedish proposal see A/C.6/313.

[18] A/C.6/SR 131, p. 2.

[19] A/C.6/314.

[20] A/C.6/SR 134, p. 5.

[21] A/C.6/SR 132, p. 9.

[22] The above-quoted statement was adopted by 20 votes to 8, with 6 abstentions.

[23] A/C.6/SR 132, p. 10.

[24] About the importance of preparatory work for the interpretation of treaties, see i. a. Oppenheim, p. 862 and footnote 4 therein; Arnold Duncan McNair, The Law of Treaties, British Practice and Opinions New York 1938, pp. 262–270; Permanent Court of International Justice, Series B, No. 7, p. 20; Series B, No. 11, p. 39; Series B, No. 14, p. 28; Series A, No. 10, p. 16; Series A, No. 20/21, p. 30; Series A/B, No. 47, p. 249.

committed in their territory. They could, however, provide for punishment of other persons (provided no extradition request is pending) since the rule of the competence of the state where a crime was committed is not an exclusive one either in domestic or in international law. Many criminal codes provide for the punishment by the state of its own citizens for acts committed abroad.[25] In such instances there is no one to interfere in their favor. Nothing could prevent a state from prosecuting foreigners for acts against its citizens except an intervention by the protecting state. In such instances the protecting state could either require extradition or claim that the prosecution is unfounded or base its complaint on the wording of article VI; this would result in a dispute coming under article IX of the convention.

(*d*) The agenda of the first session of the International Law Commission[26] included the problem of the "desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international convention" as item 4. A study on this problem[27] was to be prepared by the Secretariat. The Commission began a preliminary study on the desirability and possibility of establishing such an international judicial organ. After a short discussion the Commission decided to appoint two rapporteurs to submit jointly working papers to the next session of the Commission on this question.[28]

"ARTICLE VII

"Genocide and the other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition.

"The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force."

(*a*) This article deals with the question of extradition. Although the convention presupposes that genocide and the other acts might be considered as political crimes, they are not to be considered as such in questions of extradition, i. e., the customary principle that persons charged with political crimes are generally not subject to extradition (right of asylum for political crimes) is not to apply to the crimes coming under the convention.

Extradition is the delivery of an accused or a convicted individual to the state in whose territory he is alleged to have committed, or to have been convicted of, a crime, by the state on whose territory the alleged criminal happens to be at the time.[1] It may follow that no extradition obligation exists, under the convention, in instances referred to in article VI, other than specifically mentioned in that article (especially of persons who committed a crime against nationals of the requesting state in the territory of the requested state) even if such instances are regarded as coming under article VI.

(*b*) The parties to the convention are bound to grant extradition of persons charged with crimes falling under the convention, while ordinarily a state (if not bound by treaty) can refuse extradition for any crime. However, this obligation is conditioned upon the provisions of the domestic law in the country where the culprit has found refuge and the treaties it has concluded with the requesting state on matters of extradition. Thus, the crimes coming under the convention are not regarded as extraditable offenses per se but only within the limitations of the domestic law in the state of asylum and the convention in force. It should be noted that the above-mentioned Convention for the Suppression of Counterfeiting Currency of April 20, 1929,[2] provides that the offenses dealt with by the convention shall be deemed to be included in the various extradition treaties concluded by the contracting parties. The Genocide Convention, on the other hand, leaves all these questions to the treaties in force.

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[25] See i. a. Survey of International Law in Relation to the Work of Codification of the International Law Commission (Memorandum submitted by the Secretary General, Lake Success, 1949), p. 35 ff.

[26] A/CN.4 (3).

[27] A/CN.4 (7).

[28] United Nations Press Release L/88, June 9, 1949.

[1] Oppenheim, p. 635; art. 1 (a) of the Harvard Draft Convention on Extradition (*American Journal of International Law*, vol. XXIX, Supp. 21) defines extradition as "the formal surrender of a person by a state to another state for prosecution or punishment."

[2] See art. VI, footnote 14, above.

The parties to the convention may apply the rule of nonextradition of one's own citizens (which is common in many states).[3] It is usually not within the province of the requested state to try the case but merely to ascertain whether the evidence submitted justifies prima facie judicial proceedings against the accused.[4] Therefore the requested state is not authorized to question the evidence submitted by the requesting state.

The signatories are not bound to adopt uniform rules for extradition of persons guility of genocide and related crimes nor are they obligated to change their legislation in order to facilitate extradition in such cases, or to conclude new treates to cover genocide. Neither would there be a necessity of changing the existing extradition treaties among the parties to the convention to exclude persons accused of genocide from the list of "politically" prosecuted persons. The conclusion of the convention would automatically change the existing treaties in this respect, as article VII would bind both parties. They may not even be prohibited from enacting generally stricter extradition rules than exist at present. The only obligation incumbent upon them would appear to be that they may not refuse extradition because it is not granted in case of political crimes and that they may not enact specific rules making extradition in genocide cases more difficult than any other crime which is subject to the same punishment. Since many states refuse extradition in case of less serious crimes (as is stipulated in most extradition treaties), the question of extradition is intimately connected with the punishment which the country of asylum will establish for the various crimes coming under the convention. Since this is left to the discretion of the different countries,[5] the matter of extradition may in practice be governed even more variously in the different signatory states than would appear on the surface.

"ARTICLE VIII

"Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of Genocide or any of the other acts enumerated in Art. III."

(*a*) This article may appear to play an important part in the prevention of genocide because it is, in its wording, the only article dealing with actual prevention and suppression of this crime. However, this interpretation is not in accordance with either the Charter of the UN, or the text of the article and the avowed intention of its drafters. It is indicative of the little value which the members of the Sixth Committee attached to this article that it was originally deleted by it on the ground that this article did not comprise anything which was not already contained in the UN Charter because, under the provisions of the Charter, the members were entitled to appeal to organs of the UN in case of need.[1]

The USSR had proposed[2] that "the High Contracting Parties undertake to report to the Security Council all cases of Genocide and all cases of a breach of the obligations imposed by the Convention so that the necessary measures be taken in accordance with Chapter VI of the United Nations Charter." This would have made all such cases constitute a situation which might lead to international friction or give rise to a dispute. The Ad Hoc Committee had already rejected such an amendment because of the "impossibility of amending the United Nations Charter or of enlarging the powers of the Security Council by subsequent conventions."[3]

The USSR and France introduced later an amendment[4] proposing that the parties might call the attention of the Security Council to the cases of genocide and of violations of the present convention likely to constitute a threat to international peace and security in order that the Council might take such measures as it deemed necessary to stop the threat.

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[3] For instance France, Germany. In such cases they may, however, be bound to prosecute them (see art. VI, above). As the Chairman of the Sixth Committee declared, in reply to a question, a State, whose legislation does not provide for the extradition of its own nationals, would be under no obligation whatsoever to extradite them (A/C.6/SR 95, p. 2). See also the interpretation by the representatives of France and Belgium in A/C.6/SR 94, pp. 8–9.

[4] Oppenheim, p. 641.

[5] See, however, art. IV.

[1] See A/C.6 SR 101, p. 3.

[2] A/C.6/215 Rev. 1.

[3] A/C.6/SR 101, p. 6.

[4] A/C.6/259. It was modified by including also a reference to the G. A. and presented as a joint U. S. S. R., Iranian, and French amendment. This too was rejected (A/C.6/SR/102).

This amendment was rightly considered as adding nothing to the provisions of the Charter. It was apparently on this basis that the proposal of Belgium and Great Britain to delete the article was adopted.[5] The article was, however, reinstated by the Sixth Committee. During the discussion on article X of the draft Australia introduced an amendment[6] requesting that a second paragraph be added to this article to read as follows:

"With respect to the prevention and suppression of acts of genocide a party to the convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter of the United Nations."

This amendment was adopted by a vote of 29 to 4 with 5 absentions,[7] apparently on the basis, as the British representatives explained it, in order to show beyond doubt that it was not intended to make the International Court of Justice the only body to be appealed to, to the exclusion of the other competent organs of the UN, as was suggested by the U. S. S. R. representative at an earlier occasion.

The Drafting Committee thereupon included this amendment in a somewhat changed version as article VIII of the draft; this version was approved by the Sixth Committee and the General Assembly.

(*b*) The above-quoted contention that the article did not add anything to the existing powers of the organs of the UN was not unfounded,[8] in view of the wording of the Ad Hoc Committee's draft which provided that "a party to this convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide." This wording clearly indicated that the convention would not confer upon the organs of the United Nations any right they did not already possess under the Charter. It must be emphasized that this was hardly due to lack of desire to make the convention effective but rather to the provisions of the Charter and the functions of the United Nations organs under it, as understood by the drafters of the convention.

It is a generally accepted rule of international law that—according to the principle pacta tertiis nec nocent nec prosunt—a convention cannot impose obligations or create rights on States not parties thereto.[9] Analogously, it might follow that, even if the convention were to be phrased so as to impose on the organs of the United Nations rights and duties beyond those created by the Charter, these organs would be unable to exercise them, because the machinery of the United Nations was established on the basis of the Charter adhered to by all the members for the benefit of all of them. Thus, were an organ of the United Nations to undertake by a specific agreement among some of the members functions not covered by the Charter, it would appear to be acting outside the limits of this Charter, i. e., beyond the specific powers vested in it by all the members, inclusive of and in the name of nonmembers to the specific convention and for purposes to which those members did not agree. It would thus follow that such additional powers could be conferred upon the organs of the United Nations, apart from an amendment to the Charter, only by a convention to which all member States of the United Nations are parties. This view was apparently held by the Secretariat of the United Nations. In the comments to article XII of the first draft, it is stated that the proposal to provide "for the duty of the Secretary General to inform the competent organs of the United Nations about crimes of genocide" raised "the constitutional question whether a convention to which not every member of the United Nations will necessarily be a party may confer upon the Secretary General powers or duties relating to the application of the Charter which are not already laid down by the Charter."[10] Even more outspoken were some of the delegates to the Sixth Committee. The representative of United States of America pointed out that if a proposal should have the effect of enlarg-

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[5] A/C.6/SR 101. See also SR 102.
[6] A/C.6/265.
[7] A/C.6/SR 105, p. 11.
[8] The comments on the respective article in the Secretariat's draft made this quite clear by stating that "there is no need to expatiate on the preventive action which would be taken by the United Nations, for this is a question of the general competence of the United Nations being applied in a particular case."
[9] The exceptions relate to such instances as when a treaty involves previous treaty rights of third States, as, for instance, the most-favored-nation clause. Cf. also art. 17 of the Covenant of the League of Nations and art. 2 (6) of the Charter of the United Nations. The Polish representative at the General Committee of the Second Part of the Third Session of the General Assembly rightly pointed out that "this claim [art. 2 (6) of the Charter] did not, properly speaking, entail any legal obligations for States which were not members of the organization, and it involved only the responsibility of the United Nations as a whole" (A/BUR/SR 58, p. 7).
[10] The commentary to the Secretariat's draft (E/447, p. 46).

ing the powers of the Security Council, that would involve amending the Charter.[11] Similarly, the proposal to submit all cases to the Security Council (instead of this Council and the General Assembly) was considered not to be in complete conformity with the Charter because the Charter provided for recourse to both the Security Council and the General Assembly.[12] The above theses if taken literally are hardly correct. On the contrary there would seem to be no rule either in the general international law or in the United Nations Charter which would prevent the United Nations or its organs from accepting on request of the parties any duties not specifically covered by the Charter. In fact the organs of the United Nations were granted a number of rights under the peace treaties with the satellites. Section III of the Peace Treaty with Italy confers upon the Security Council the right of approval of a provisional regime for the Free Territory of Trieste as well as the right to fix the date of the coming into force of a Permanent Statute likewise approved by it. Following article 23 of the same treaty the Governments of Union of Soviet Socialist Republics, the United Kingdom, the United States of America, and France agreed to refer to the General Assembly for a recommendation to be accepted by them the question of the disposal of the Italian colonies if no agreement was reached by them within one year from the coming into force of the treaty. All the peace treaties with the satellites grant the Secretary General the right to appoint the third member of a commission to decide upon disputes concerning the interpretation or execution of the treaties, if the parties fail to agree upon such a member within one month.

The Security Council has acted upon its prerogatives in the Trieste case; and so has the General Assembly in regard to the Italian colonies. They have acted on the basis of an agreement among the powers concerned and without involving action by any member of the United Nations. Similarly, in the present case it would appear to be possible for the General Assembly or the Security Council to undertake to exercise powers additional to those resulting from the Charter if they are restricted to discussions or recommendations; however, the convention could not bind members of the UN nonparties to the convention to anything at all. This is also obvious from article 2 (5) and the provisions of chapter VII, which are clearly confined to action taken on the basis of the Charter.

Therefore, the organs of the United Nations could accept special powers under the convention, provided it is restricted to discussion, investigation, or recommendations not involving the members in any action or dispute.

It might seem that if the General Assembly adopts the draft convention unanimously, this would be sufficient to overcome the constitutional difficulties because all the member states could be regarded as having agreed to it. This view is by no means correct, since the representatives of the members of the United Nations in the Assembly act, within the scope of the Charter, as members of the Assemby and not as plenipotentiaries of the states they represent. This is obvious i. a. from the provisions of the Charter defining the competence of the General Assembly, which is restricted to discussions and recommendations, not binding upon the members.

Although, as seen above, the convention might have conferred upon the organs of the United Nations certain rights beyond those contained in the Charter (for instance, discussions and recommendations by the Security Council, which is always in session, instead of the General Assembly, which meets ordinarily only once a year) or imposed obligations on the parties beyond those of the United Nations members, the drafters of the convention did not do it; they confined themselves to the wording of the Charter in every respect.

Article VIII grants the parties to the convention the right to call upon these organs to take action, i. e., it does not impose on them any obligation. The Secretariat's draft provided, at least, for an undertaking by the parties to "do everything in their power to give full effect to the intervention of the United Nations," although even this could be regarded as a confirmation of article 2 (5) of the Charter.

(*c*) The main difference between the Secretariat's draft and the Ad Hoc Committee's version was that the former explicitly referred to crimes committed or expected "in any part of the world" while the latter did not mention the place of the crime. The question of whether the organs of the UN may act only in instances of genocide committed within a territory of a party or anywhere can be decided only on the basis of the provisions of the Charter. Article

[11] A/C.6/SR 101.
[12] Ibid.

2 (6) provides that "the organization shall ensure that States which are not Members of the United Nations act in accordance with these Principles [those contained in art. 2 (1–4) of the Charter] so far as may be necessary for the maintenance of international peace and security." According to article 11 of the Charter, the General Assembly "may discuss questions relating to the maintenance of international security and peace brought before it by any member of the United Nations, or by the Security Council or by a State which is not a member of the United Nations." The main responsibility for maintenance of international security lies with the Security Council acting in accordance with the provisions of chapters VI, VII, VIII, and XII of the Charter. The Charter proceeded upon the assumption that peace is one and indivisible; it did not restrict the powers of the Security Council to territories under the authority of members of the United Nations. Finally, the Secretary General may bring to the attention of the Security Council any matter which, in his opinion, may threaten the maintenance of international peace and security (art. 99), again without territorial limitation.

It could be maintained that, in view of article 2 (6) of the Charter, even if a separate convention provides otherwise, these organs could not act "in any part of the world" (i. e. outside the membership), except if the action related to the maintenance of international peace and security and only so far as one "of the principles of the Charter is violated." These principles, as enumerated in article 2, refer to peaceful solutions of international disputes and the renunciation of the use of force. Thus the United Nations could presumably deal, according to the Charter, with nonmembers only if they are involved in international disputes or are trying to use force against another state. In other words, only if a nonmember committed acts of genocide which involve an international dispute, or made preparations for acts of genocide which may result in the use of force against another state could the United Nations intervene on the basis of the Charter.

This view, however, is not wholly correct. Article 10 of the Charter is so broad that no limitations whatsoever could be placed on the discussions and recommendations by the General Assembly. In the same way as it discussed the problem of human rights in nonmember states (the Mindszenty case, the case of religious freedom in Hungary and Bulgaria),[13] apparently on the principle of promoting "universay respect for, and observance of, human rights," it could discuss violations of its resolution on genocide and of the principles established in the convention by virtue of its authority to deal with matters relating to the encouragement of progressive development of international law (art. 13 (a)).[14] The same applies to action by the Security Council, within the scope of its formal authority. This action does not make the convention binding upon nonsignatories, but is simply an application of the general powers of the organs of the United Nations to the specific case of genocide.[15]

(*d*) According to the above, the United Nations organs which are called upon to act are those which are competent in accordance with the UN Charter. Reference was made during the debates [16] to the General Assembly and the Security Council.[17] It is not clear whether the Economic and Social Council (whenever it is competent under art. 62) and the Trusteeship Council (in cases of trust territories) could also be considered as competent organs. Prima facie it would seem that the Economic and Social Council has no competence in such cases, unless the General Assembly delegates such powers to it. The authority of the Trusteeship Council could not be denied.

The article states that these organs are to be called upon to take such action under the Charter as they consider appropriate. This expression ("appropriate") obviously does not mean that the General Assembly, for instance, may do more than it is authorized under the Charter, because, as stated above, the convention did not confer upon it adidtional powers. "Appropriate" action is action within the framework of the general competence of the organs. The reference to

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[13] See A/BUR/SR 58, 59, and A/PV 189 ff.

[14] As Mr. Evatt put it during the debates on the Mindszenty case in the General Committee "there was not a single question or matter coming within the scope of the Charter, relating to its aims, its principles or any one of its provisions, which could not be discussed by the General Assembly. If any question was covered by an article of the Charter, that question would no longer be a matter essentially within the domestic jurisdiction of a state. Whether a state in which human rights had been violated was or was not a member of the United Nations had, in his view, no bearing on the question" (A/BUR/SR 58, p, 13).

[15] About the applicability of the convention to nonmembers, see art. I above.

[16] A/C.6/SR/101.

[17] For further action by the Security Council, see art. IX below.

"action under the Charter" correctly states that it relates to the powers these organs possess under the Charter, which means that only the Security Council (when it is competent) may take real steps to prevent or suppress acts made punishable under the convention; the General Assembly can only discuss the matters and make recommendation to the Security Council or to member states.

(*c*) One of the most obvious restrictions generally imposed on action by the United Nations (especially the General Assembly and its subsidiary organs) is that resulting from article 2 (7) referring to "matters which are essentially within the domestic jurisdiction" of the states. It is obvious that a matter dealt with in an international convention cannot be regarded as being essentially within the domestic jurisdiction of the parties to the convention. Therefore, all problems relating to crimes punishable under the convention become matters within the jurisdiction of the United Nations. There is no doubt that this applies to the states which have ratified the convention. The other members of the United Nations, by refusing to adhere to the convention, did not renounce their right to consider those acts as being essentially within their own jurisdiction. This will apparently be the contention of the members of the United Nations which will not ratify the convention, despite the aforecited resolutions of the General Assembly declaring genocide to be a crime under international law. However, as seen above, such an interpretation would not impair the powers of the General Assembly or the Security Council. It could thus be claimed that so far as article VIII is concerned there exists hardly any difference between parties and nonparties to the convention, which conclusion is the logical consequence of the importance of this article as explained above.

"ARTICLE IX

"Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for Genocide or any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

(*a*) This article went through a number of changes. Article XIV of the Secretariat's draft was very brief and contained only a proviso that disputes relating to the interpretation and application of the convention be submitted to the International Court of Justice. The Ad Hoc Committee at first omitted this article altogether but reinstated it later upon the request of a member of the Committee.[1]

However, in order to avoid concurrent or conflicting jurisdiction with the proposed international criminal tribunal, the article was supplemented so as to exclude from submission to the International Court of Justice disputes referred to or pending before international criminal tribunals.

In the Sixth Committee the article of the Ad Hoc Committee provoked various reactions. Many amendments were submitted, among them a joint amendment by Belgium and United Kingdom,[2] suggesting the omission of the reference to concurrent jurisdiction (because art. VIII was excluded at the time) and to supplement the provision with a reference to disputes relating to the responsibility of a state for acts punishable under the convention. The proposal to include disputes relating to state responsibility was adopted by the very narrow margin of 19 votes to 17, with 9 abstentions,[3] while the original part of the article (dealing with disputes over the interpretation or application of the convention) was adopted by 30 votes to 9, with 8 abstentions. The clause about concurrent jurisdiction was excluded by a vote of 22 to 8, with 6 abstentions.[4]

(*b*) The present article may well be considered as one of the most important in the convention: it creates compulsory jurisdiction of the International Court of Justice in all cases relating to the convention, while article 36 of the statute of the Court provides for the jurisdiction of the Court only in cases which states parties to a dispute refer to it. The states which are parties to the statute may declare that they recognize as compusory ipso facto and without special agreement the jurisdiction of the Court in all legal disputes concerning the interpretation of a treaty, questions of international law, the existence of facts which, if

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[1] The representatives of U. S. S. R. and Poland voted against it, being opposed to international jurisdiction as an infringement upon the sovereignty of the state (E/797, p. 39).
[2] A/C.6/258.
[3] A/C.6/SR 104. However, the amendment as a whole containing this clause was adopted by 23 votes to 13, with 8 abstentions (ibid.).
[4] A/C.6/SR 105.

established, would constitute a breach of an international obligation, and the problem of reparation. Thus this article is a declaration within the meaning of article 36 of the statute and imposes upon all states parties to the convention the obligation to refer all disputes enumerated therein to the International Court of Justice. The importance of this obligation is evident from various provisions of the Charter. Article 33 imposes upon the members of the United Nations the obligation to seek a solution of disputes by judicial settlement only if the dispute is such that its continuance is likely to endanger the maintenance of international peace and security. The present article contains no such restriction, i. e., the obligatory jurisdiction relates to all disputes without exception. In accordance with article 94 of the Charter, the members of the United Nations undertake to comply with the decision of the Court in any case to which they are parties, i. e., the fulfillment of its judgment constitutes an obligation under the Charter. Furthermore, the same article stipulates that if a party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment. Thus the Security Council may be involved in cases which otherwise would not come under its competence in accordance with chapters V–VII of the Charter. Finally, article 2 (5) imposes on all members the obligation to give to the United Nations assistance in any action it takes in accordance with the Charter; therefore the Security Council's measures may involve action by all members of the United Nations against a state refusing to comply with the judgment of the International Court of Justice.

(c) The obligation of the parties to submit disputes to the International Court of Justice is broad in regard to subject matters: it includes not only the interpretation of the provisions of the convention but also its application (i. e., cases where its nonapplicability is contended) and the fulfillment of the obligations imposed (i. e. carrying out). The last would include the obligation to enact the necessary legislation (art. V) to extradite culprits (art. VII), and to prosecute those responsible for acts punishable under the convention (art. VI). In addition, such disputes may relate to the responsibility of a state for acts of genocide or any of the other punishable acts. As stated above, one of the weak spots in the convention is the lack of explicit reference to the responsibility of the state for action taken by its government or authorities. It was contended that genocide could rarely be committed without the participation or tolerance of the state and that therefore the convention which does not provide against such action could not accomplish its purpose. It was this contention which prompted the British and Belgian representatives to submit the amendment to article IX referred to above. However, there were many doubts as to the actual meaning of that proposal. First, it was not clear whether the responsibility was criminal or civil. It was obvious that states could not be charged with criminal, but only civil, or international, responsibility. However, the definition of civil responsibility is by no means clear. Usually it involves the question of compensation, but no provision relating to reparation of damage was adopted, as stated above. In absence of such a specific reference and in view of the fact that the jurisdiction of the International Court of Justice, according to article 34 of the statute, could be invoked only by another state,[5] the question of compensation could arise only if the respondent state were responsible for such action in the territory of another state or against citizens of the claimant state. No compensation could be claimed for the benefit of the citizens of the respondent state or other persons not protected by a claimant state because in international law the holder of a right in all international disputes is the state.[6]

Article 36 of the International Court of Justice Statute provides that the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and convention in force. Since the noncompulsory character of the jurisdic-

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[5] An amendment of Haiti (A/C.6/263) which proposed to grant the right of recourse to individuals and groups was rejected by the Sixth Committee as not being in accordance with the statute of the Court.

[6] Marjone M. Whiteman, Damages in International Law, vol. I, p. 275, Washington 1937.

"It is an elementary principle that, when a government officially intervenes on behalf of its citizen, it makes his claim his own . . .", John Bassett Moore, dissenting opinion in the Mavrommatis Palestine Concessions Case, Permanent Court of International Justice, Series A, No. 2, pp. 54, 63.

Some representatives (see Iran) felt that the Court would have no difficulty in deciding in each specific case to whom the reparation of damage caused should be made, but this contention is not borne out by the general rules of international law, if it implies a judgment on actual reparation.

tion is the rule, the exception (i. e., compulsory jurisdiction) must be explicitly stated. Article 36 is very cautious in this respect; it enumerated in paragraph 2 four subjects of disputes in compulsory jurisdiction, among them "the nature and extent of reparation to be made for the breach of an international obligation." It would follow from this enumeration that since the convention does not specifically refer to reparation, the parties to it did not undertake to have accepted the Court's compulsory jurisdiction in this question.

A claim for compensation could be based on the generally accepted rule of international law that an international delinquency involves the reparation of the material wrong done.[7] However, article IX did not create compulsory jurisdiction in question of reparation so that the claim must either be enforced by other means or the parties to the dispute must agree to submit this question to the Court.

On the other hand, there would appear to be no reason why the International Court of Justice could not generally declare that the respondent state is responsible for the damage caused, although it could neither state the amounts involved nor award such damages to the claimant state.

(*d*) Although, only states could be parties to a case before the International Court of Justice, article 34 (2) of the statute of the Court grants public international organizations the right to submit to the Court information relevant to the case; the Court may also request such organizations to present information.

(*e*) The problem of the relation between article VIII and IX was the subject of discussions in the Sixth Committee. The U. S. S. R. representative contended that the purposes of the aforementioned British-Belgian amendment seemed to be to prevent any country from submitting to the Security Council or to the General Assembly complaints in regard to acts of genocide. However, this contention is not well-founded: There is no provision in either the Charter or the statute of the International Court of Justice which states that the possibility of referring a case to the ICJ would prevent the party from submitting it to the Security Council or another competent body of the United Nations. The convention generally leaves the choice of the remedy to the party; as is evident from the wording of articles VIII and IX, in both cases action may be taken only on the basis of a request by a contracting party. There might, however, arise the question of simultaneous action on the same matter by two bodies of the United Nations, if several contracting parties should request a remedy at the same time. It may happen that one will refer the case to the International Court of Justice, another will call upon the General Assembly, a third one on the Security Council. In such cases the relation between the General Assembly and the Security Council is regulated by article 12) of the Charter, which provides that "while * * * so requests." There is, however, no explicit provision for the concurrent competence of the International Court of Justice on the one hand and the other organs of the United Nations on the other Aritcle 40 (3) of the Court's statute and article 34 of the Rules of Court, which provide that the members of the United Nations shall be notified through the Secretary General, about all cases submitted to it, may well serve to obviate duplication in action. Should such parallel action be taken, it will be up to the paintiff parties, if applications are made to the International Court of Justice and other organs, to decide between them what action should be pursued first. In the absence of such an agreement, it will be up to the organs of the United Nations to make the decision in accordance with the best interests of the case.

(*f*) In addition to the competence established in article IX, the International Court of Justice may also be called upon by the General Assembly or the Security Council to render an advisory opinion on any matter relating to the convention, in accordance with article 96 of the Charter.

(*g*) The present article clearly indicates that ordinarily (i. e., except for an advisory opinion) a case may only come before the International Court of Justice if it develops into a dispute between the accused state and another party to the convention and relates to either the interpretation, the application, or the fulfillment of the convention. When a case develops into a dispute, is a question of general international law: There must be a divergency of views between the respondent state and another contracting party on any of these questions which cannot be resolved by direct diplomatic negotiations. Thus no case can be brought before the Court unless it involves a dispute between at least two of the contracting parties.

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[7] See i. a. Eagleton, The Responsibility of States in International Law, N. Y., 1928, pp. 182–205; Hyde, vol. II, p. 882; Whiteman, vol. I, p. 6.

Articles X–XIX of the convention

These articles deal with a number of procedural questions common to all international treaties, such as the authentic language, the signature, the ratification, coming into force, duration of validity, denunciation by the contracting parties, amendments, registration by the Secretary General.

"ARTICLE X

"The present Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948."

According to article X, there are five authentic languages. This means that all the five texts are of equal authority. It is obvious that there may be discrepancies among these texts.[1] In such cases the dispute as to the correct meaning of a certain provision of the text will be a dispute concerning the interpretation of the convention and hence subject to the jurisdiction of the International Court of Justice. The fact that the discussions were conducted mainly on the basis of the English, and partly on the French, texts may be an element in the decision of the Court but does not give these texts any priority in interpretation as compared with the other three texts, viz, Chinese, Russian, and Spanish.

The five authentic languages of the convention are the official languages of the General Assembly, its committees and subcommittees, according to rule 44 of the Rules of Procedure of the General Assembly.

"ARTICLE XI

"The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any nonmember State to which an invitation to sign has been addressed by the General Assembly.

"The present Convention shall be ratified, and the instrument of ratification shall be deposited with the Secretary General of the United Nations.

"After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

"Instruments of accession shall be deposited with the Secretary General of the United Nation."

(*a*) There are two methods for a state to become a party to an international convention. The first is to sign it on behalf of the government by those who represent it in the conference where the convention was drafted; this signature, however, is usually not binding upon the State and signifies only that the Government agrees to the text of the treaty.[1] Although there are exceptions to the rule, it is now a universally recognized customary rule of internationl law that treaties regularly require ratification,[2] i. e., final confirmation given by the parties through their constitutionally appointed bodies to an international treaty concluded by their representatives, even if this is not expressly stipulated in the respective treaty. In order to obviate any doubts about it, article XI specifically provides for the necessity of ratification.

The second method is by accession, i. e., the formal entry of a third state into an existing treaty, so that is becomes a party to the treaty with all the rights and duties arising therefrom. Such accession can take place only with the consent of the original contracting parties. In order to avoid the necessity of consent in every case, article XI provides that the treaty may be acceded to on behalf of any member of the United Nations and any nonmember state which has received an invitation from the General Assembly.[3] It is obvious that, although

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[1] For details see above, art. IV.

[1] "A signature is the sign affixed by negotiators at the foot of the provisions on which they have agreed. It presupposes that each signatory is in full agreement with the other signatories; it establishes the assent of each of the negotiators to the final result of the negotiations, and the reciprocity of these assents" (Report of the Committee for the Progressive Codification of International Law, approved by the League of Nations Council in June, 1927, L. o. N. Document C. 357, M.130.1927, V. 16.

[2] Oppenheim, p. 815; Francis O. Wilcox, The Ratification of International Conventions, London, 1935, p. 30.

Art. 5 of the Habana Convention on Treaties (Manley O. Hudson, International Legislation, v. IV, 2380, Washington, 1931) stipulates that treaties are obligatory only after ratification, even though this condition does not appeal in the treaty itself.

See also Permanent Court of International Justice, Series A. No. 23 ("Case of the International Commission of the Oder River"), p. 21: [It] "is a rule that conventions, save in certain exceptional cases, are binding only by virtue of their ratification."

[3] For the choice of the General Assembly, see art. XVI, below.

accession usually does not require ratification and the convention does not provide for it, it could be done only upon fulfillment of the conditions prescribed by the domestic law of the given country for such adherence.

The above theoretical distinction has not been strictly adhered to by article XI because accession may also be made by members of the United Nations, i. e., those who participated in the same way as the states which signed it in the drafting of the convention and signatures are possible not only by members, but also nonmembers of the United Nations, which could not have participated in the first stage.

The Secretariat's draft provided as an alternate solution accessions only, on the theory that the approval of the convention by the representatives of the government in the General Assembly may obviate the necessity for signature. The Ad Hoc Committee, however, preferred the usual procedure of signature followed by ratification, for the original members. Article XI combines, as stated, both possibilities, but restricts the signature to January 1, 1950. This is done in order to avoid delays involved in ratification.

(*b*) The convention provides that the instruments of ratification and accession shall be deposited with the Secretary General of the United Nations. The deposition of ratification is a usual provision of all multilateral treaties since there must be one place which can state with authority the number of ratifications or accessions, their date, and the like. This deposition is especially required in view of the provision of article XIII.

"ARTICLE XII

"Any Contracting Party may at any time, by notification addressed to the Secretary General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible."

A convention is usually applicable within the boundaries of the signatory state. However, there are certain territories which, although under the sovereignty of a state, are not part of it, as, for instance, protectorates, self-governing colonies. Even looser is the relation between trust territories (formerly mandated territories) and the trustee. It is customary in such instances to give the parent state the right to extend the application of a convention to which it has adhered, to such dependent territories without making the extension obligatory, since the given instrument regulating the relations between the state and the territory or the specific nature of the treaty may militate against an automatic extension.

The present article XII did not figure in any of the preceding drafts. The British representative, however, submitted in the Sixth Committee a proposal for a new article[1] contending that it was customary during the last 20 or 30 years to include a special provision authorizing states with dependent territories to extend the application of the given convention to these territories or some of them, but not requiring the state to extend them automatically. In cases of self-governing territories it would be constitutionally impossible for Great Britain to accept a convention for such territories without first consulting them. It was the opinion of the United Kingdom Government that international conventions to which it became a party could not be automatically extended to colonial territories and that there was no legal means of imposing on a metropolitan government the obligation to extend a convention to such territories.[2] The Uited States representative's declaration that his Government was prepared to extend the application to all territories where constitutional provisions permitted was rather a confirmation of the British viewpoint. It is generally accepted that treaties concluded by the protector state are not ipso facto concluded for the protected state (protectorate).[3] It was for these rea-

[1] A/C. 6/236.

[2] A/C. 6/SR 107. See, however, McNair, op. cit., p. 78, where he contends that "in default of something in the text of the treaty pointing to a contrary conclusion," it, [i. e., the rule that in the League of Nations' convention the King is habitually stated to contract for all parts of the British Empire which are not separate members of the League of Nations] will so apply."

[3] Oppenheim, op. cit., p. 175. Cf. however, McNair who contends that if the treaty is of "such a kind that it imposes obligations of a general character unrestricted as to geographical area, viz, to punish certain kinds of crime," the rule is "that, subject to express or implied provision to the contrary, the treaty applies to all the territories of the contracting party which has concluded it, e. g., to all French territories, including colonies, protectorates, mandated territories, etc." (op. cit., p. 77).

sons that the Ukrainian proposal to make the extension of the convention to dependent territories mandatory [4] was not adopted and article XII was included in the convention by a vote of 18 to 9, with 14 abstentions.[5]

Article XII thus only grants the contracting parties the right to extend the application of the convention to any territory for the conduct of whose foreign affairs the contracting party is responsible, but does not make it obligatory. In order to strengthen this clause, the Sixth Committee adopted a draft resolution proposed by Iran [6] recommending that the parties to the convention which administer dependent territories (this relates to all dependent territories including trust territories) take such measures as are necessary and feasible to enable the provisions of this Convention to be extended to such territories as soon as possible. This resolution was approved by the General Assembly.

"ARTICLE XIII

"On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary General shall draw up a proces-verbal and transmit a copy of it to each Member of the United Nations and to each of the nonmember States contemplated in Article XI.

"The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

"Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession."

As in the case of all multilateral treaties not restricted to specified nations, the question arose as to how many states have to ratify the convention in order to put it into legal force. It was obvious that a convention of this nature could not be effective if its validity is restricted to a few nations. The Secretariat's draft did not fix the minimum. The Ad Hoc Committee agreed on 20 parties, as a compromise between those who wished a larger number and those who were content with a smaller one. This figure was also adopted by the present text. Accordingly, the convention does not come into force for any party (even those who have duly ratified it and deposited the ratification as prescribed or acceded to it) until the number of ratifications and accessions reaches the number of 20. There is no time limit set for reaching this minimum, i. e., it may take as long as necessary. This is an obvious inconvenience for the first "parties," which have gone through the formalities of ratification and deposition or accession only to see months and even years pass and the treaty still remain a draft. There are two ways to mitigate this situation: (1) the ratification may be made under a reservation that it becomes invalid upon the expiration of a certain time or (2) the General Assembly may adopt at a later time a resolution setting a dead line for accessions. In the first alternative, the convention may still come into legal force upon fulfillment of the provision of article XIII if enough parties accede to it (or some of the original members do not make a reservation in time); in the second case the convention would have become inoperative after the expiration of the time limit set by the General Assembly, unless the minimum is reached.

As in the case of most international conventions, article XIII provides for a short delay between the date of the deposition of sufficient ratifications or accessions and the coming into force of the convention. The 90 days' interval prescribed is for the purpose of giving notice to the signatories (as stipulated in art. XVII) in order to enable them to set the convention in motion by promulgation or otherwise. Without such a delay, a party would not know in time that the convention has already come into force for it; neither would it know in time exactly what other states are parties to the convention. This is the reason why the convention prescribes the same delay for the coming into force of ratifications or accessions made subsequently to the general coming into force of the convention.

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[4] A/C. 6/264.

[5] A/C. 6/SR. 107, p. 12. A similar clause is to be found in art. 62 of the London Convention for the Safety of Life at Sea, May 31, 1929 (Manley O. Hudson, International Legislation, v. IV, 2767), and in art. XVIII of the Convention on the International Transmission of News and the Right of Correction, approved by the General Assembly on May 13, 1949.

A clause which presumes the extension of the convention to colonies, protectorates, etc., is to be found in art. 20 of the Geneva Films Convention, October 11, 1933 (ibid, v. VI, 466).

[6] A/C. 6/268.

"ARTICLE XIV

"The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

"It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

"Denunciation shall be effected by a written notification addressed to the Secretary General of the United Nations."

(*a*) International treaties are concluded either for a specified period or sine die. Although it is generally assumed that treaties concluded forever cannot be dissolved except by mutual consent, it was argued by some that such a treaty could be denounced at any moment.[1] Because of these considerations the Secretariat's draft provided for two alternatives: either the convention should be concluded for 5 years with automatic prorogation in the absence of denunciation at the expiration of this period, or no time limit should be set at all and the parties be granted the right to denounce the convention, by notification to take effect 1 year after its receipt. The draft of the Ad Hoc Committee adopted the first alternative on the argument that it provided for a more stable situation than the second. The Sixth Committee took over this proposal and modified it only to the extent that the first period of validity was set at 10 years instead of the 5 proposed by the Ad Hoc Committee.

A proposal was submitted in the Sixth Committee by Beligum[2] to delete article XIV of the draft because the limitation of the period of validity (and the possibility of denunciation) was contrary to the General Assembly Resolution 96 (I) which proclaimed a principle of international law, the essential character of which is permanence. As the convention was merely to serve to put that principle into operation, it could not be temporary or subject to the variations which would result from denunciations. This view was supported by the representatives of Uruguay and the United Kingdom.[3] However, other representatives were more concerned with the imperfect character of the convention which does not lend itself to permanence, and the fear that many states might refuse to adhere to such a new-type convention without reserving the right to denounce it after some experience. In view of these arguments the Belgian, United Kingdom, and Uruguayan amendments were withdrawn and article XIV with the Chinese amendment to replace the initial 5-year period with 10 years was adopted by 38 votes to none with 3 abstentions.[4]

(*b*) According to the present article, the convention, whenever it comes into force in accordance with article XIII, is to remain valid for all parties, regardless of the time of ratification or accession, for 10 years from the ninetieth day following the deposition of the twentieth instrument of ratification or accession. The parties are given the right to denounce it by notification to the Secretary General of the United Nations, at least 6 months before the expiration date. The convention then remains valid for successive periods of 5 years for the parties which have not denounced it in time and loses its validity for those whose notification was made in time.

There is, however, a possibility of invalidating the convention also for those parties which have not denounced it. Article XV provides that the convention ceases to be in force for all parties if as a result of denunciations the number of parties becomes at any time less than 16. This provision is the result of the above-discussed assumption that a convention of this kind cannnot be effective unless it is valid in a certain number of states.

(*c*) Treaties have ordinarily no retroactive force.[5] Despite the fact that it is based on resolutions of the General Assembly dating back to 1946 (which affirmed genocide to be a crime, i. e., recognized that it has always been a crime), it could hardly be contended that the convention binds the signatories to punish offenders for acts committed previous to its coming into force for the given country. It could even be argued that—since as a rule no law has retro-

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[1] E/447, p. 58.

[2] A/C. 6/217. Other amendments to this article were presented by the United Kingdom, Uruguay, U. S. S. R., and China; the first two also favored the deletion of the article.

[3] A/C. 6/SR 108, p. 23.

[4] Ibid., p. 7.

[5] The position in the United States of America is that "a treaty is binding on the contracting parties, unless otherwise provided, from the date of signature, the exchange of ratifications having, in such cases, a retroactive effect, confirming the treaty from that date" (Mervyn Jones, The Retroactive Effect of Ratification of Treaties, 51 American Journal of International Law 25).

active force—no punishment can be imposed before the state in question has enacted the legislation provided for in article V. It was underscored, during the debates in the Sixth Committee, that the principle of retroactivity (contrary to the Charter of the International Nuremberg Tribunal) was not embodied in the convention,[6] that the principle of retroactive effect would not be applied "because the signatory states undertook to enact the necessary legislation to prevent and punish genocide," [7] and that the convention was a "law for the future." Nevertheless, nothing could prevent a signatory state from giving the legislation retroactive effect, if retroactive laws are permissible in that state. At any rate, it would seem that prosecution could take place on the basis of the new laws, if the action was punishable anyhow—as homicide, for instance—and the punishment imposed was not higher than it would have been under the general criminal laws of the country.

No question as to retroactivity could rise in connection with article VIII, because, as stated above, it does not introduce anything new. On the other hand, it is obvious that article IX could not be invoked except for acts of the state following the ratification of the convention or, if the retroactive effect dating back to the signature is accepted, the signature thereof.

(*d*) The convention does not contain any reference to reservations, i. e., the accession to a treaty on the condition that the acceding party shall not be bound by particular provisions of the text. The Secretariat's draft did not put forward any specific propositions, as the authors were not sure whether reservations ought to be permitted at all and whether an article relating to them should be included in the treaty. The authors of that draft thought that this question should be left for discussion in the General Assembly.

The draft of the Ad Hoc Committee was also silent on this point. During the discussions in the Sixth Committee the question of reservations came up in connection with the explanations given by various delegates of their vote on the draft convention adopted by the Committee. A number of delegates voiced the possibility of reservations their governments might make either to some articles of the convention or to the interpretation of certain expressions.[8] The representative of the Dominican Republic announced that reservations would be made formally at the time the convention was signed and it was agreed that it was for the various governments to make reservations at the time of signature or ratification.

Since the convention is silent on this topic, the generally accepted rules of international law must apply. There is no definite rule to the effect that if a treaty does not provide for the permissibility of reservations, they are excluded. It appears, however, to be the accepted view that, if the treaty itself does not contain a stipulation that a particular provision does not apply to the state making the reservation [9] or if the reservation was declared to be contemplated during the conference on the treaty, "every reservation must be the subject of definite acceptance by the other signatories." [10]

Reservations are made either at the time of signature or of ratification or accession. So far, no state which signed the convention is known to have made any reservations.

"ARTICLE XV

"If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective."

This article does not arouse any difference of opinion.

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[6] A/C. 6/SR 110, p. 9.

[7] Ibid., p. 10.

[8] Thus the United States representative dealt in this connection with the question of the "responsibility of a state," in art. IX of the convention, extradition for acts committed before legislative measures were taken by the Congress to define the new crime (A/C. 6/SR 133, p. 3–5, 8, 9, 11). The Indian delegation (A/PV 178, p. 63–65) referred to arts. VI and IX, the Dominican to articles against which he voted: the Belgian to extradition. See also A/PV 179, p. 22 (United Kingdom), A/C. 6/SR 133, p. 10 (Syria).

[9] See, for instance, art. 287 of the Versailles Treaty, art. 98 of the Lausanne Treaty.

[10] Oppenheim, p. 822; McNair, op. cit., p. 105/6; Malkin, British Yearbook of International Law, 1926, pp. 141–162; Report of the Committee of Experts for the Progressive Codification of International Law, cited in art. XI, footnote 1, above. See also art. 6 (II) of the Habana Convention on Treaties, quoted in art. XI, footnote 2, above.

This was also the view of the rapporteur in the Sixth Committee who stated that "if a government made reservations regarding a convention it could not be considered as a party to that convention unless the other contracting parties accepted those reservations, expressly or tacitly (A/C. 6/SR, 133, pp. 11/12).

"ARTICLE XVI

"A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary General.

"The General Assembly shall decide upon the steps, if any, to be taken in respect of such request."

(*a*) The parties which conclude a convention are obviously authorized to amend it. Ordinarily it is left to the parties to agree on such amendments. In this case, however, the convention was drafted by the organs of the United Nations and approved by the General Assembly. For this reason, article XVI provides that revision of the convention can be made only on the basis of a decision by the General Assembly, based on a notification by a party addressed to the Secretary General.

The Ad Hoc Committee proposed to limit proposals for revision to such cases where they were made by at least one-quarter of the number of parties to the convention because individual requests would only burden the agenda of the General Assembly without having any chance of success. It was made clear, however, that this was a derogation of the right of every member of the United Nations to bring to the attention of the General Assembly questions within its competence (rule 12 (e) of the General Assembly Rules of Procedure). There were in the Committee differences of opinion as to whether this right could be waived in a separate convention, especially in view of article 103 of the Charter. The joint amendment of France and U. S. S. R. to provide explicitly for the right of every member to propose amendments was adopted by 25 votes to 11, with 4 abstentions.[1] As no specific rules are laid down for such a decision the provisions of the Charter relating to decisions by the Assembly are valid. Article 18 of the Charter and rule 76/7 of the General Assembly Rules of Procedure provide that decisions on ordinary questions shall be made by a simple majority of the members present and voting and decisions on important questions by a two-third majority. The article and rules contain a list of questions requiring a two-third majority; the approval of a decision on an international convention and its amendment is not included in the list. However, the last paragraph of article 18 and rule 76 stipulate that the Assembly may determine, by a majority vote of the members present and voting, additional categories of questions requiring a two-third majority. No such determination has been made so far in regard to the approval or amendment of conventions. It may therefore be assumed that, unless the Assembly should decide otherwise in the future, a decision in connection with article XVI (2) of the convention would require a simple majority.

(*b*) Although article XVI leaves to the Assembly the decision on the steps to be taken in respect to amendments, there is no doubt that any amendment will require the same formalities on the part of the signatories as the putting it into force, namely, ratification by the parties. This is the usual practice in international law, as the amendment of an international convention imposes on the states the same kind of obligations as the original treaty.

The convention does not state how many parties have to agree formally to the amendment, i. e., ratify it, and when it comes in force. This will be decided by the Assembly and represent part of the amendment. There is no absolute necessity to have all parties or even a substantial number adhere to the amendment because owing to possible reservations certain differences may anyhow exist among the obligations undertaken by the individual parties. The Assembly may, however, decide otherwise. This will depend on the importance of the amendments: they may be of such nature that unless adhered to by all parties to the convention they will be useless.

"ARTICLE XVII

"The Secretary General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article XI of the following:

"(a) Signatures, ratifications and accessions received in accordance with article XI;

"(b) Notifications received in accordance with article XII;

"(c) The date upon which the present Convention comes into force in accordance with article XIII;

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[1] A/C. 6/SR 108, p. 11.

"(d) Denunciations received in accordance with article XIV;
"(e) The abrogation of the Convention in accordance with article XV;
"(f) Notifications received in accordance with article XVI."

Article XVII is of a purely formal nature and concerns the obligation of the Secretary General to keep the parties informed about any act relating to the validity of the convention and proposals of amendments.

"ARTICLE XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

"A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-Member States contemplated in Article XI."

Article XVIII is so clear that it requires no comments.

"ARTICLE XIX

"The present Convention shall be registered by the Secretary General of the United Nations on the date of its coming into force."

Article XIX was formulated in accordance with article 102 of the United Nations Charter which stipulates that every treaty entered into by any member of the United Nations shall be registered with the Secretariat. Article 102 provides that no party to a treaty, which has not been registered accordingly, may invoke that treaty before any organ of the United Nations. As the convention provides for the possibility of invoking its provisions before the organs of the United Nations, it is obvious that its registration with the Secretariat is a conditio sine qua non for its validity.

ANNEX I

RESOLUTION 96 (I) OF THE GENERAL ASSEMBLY

"Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these groups, and is contrary to moral law and to the spirit and aims of the United Nations.

"Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

"The punishment of the crime of genocide is a matter of international concern.

"The General Assembly therefore,

"Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices—whether private or individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds—are punishable;

"Invites the Member States to enact the necessary legislation for the prevention and punishment of this crime;

"Recommends that international cooperation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide, and, to this end,

"Requests the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly."

Resolution 96 (I) of the General Assembly comprises a number of elements:

1. It "affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices—whether private individuals, public officials, or statesmen, and whether the crime is committed on religious, racial, political, or any other ground—are punishable:"

2. The General Assembly "invites the Member States to enact the necessary legislation for the prevention and punishment of this crime."

This refers to prevention and punishment by the national law of each of the Member States.

3. The General Assembly "recommends that international cooperation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide. * * *"

This refers to international action and to this end the resolution requests: "the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft Convention on the crime of genocide to be submitted to the next regular session of the General Assembly."

ANNEX II

RESOLUTION 180 (II) OF THE GENERAL ASSEMBLY

"The General Assembly,

"Realizing the importance of the problem of combating the crime of Genocide;

"Reaffirming its resolution 96 (I) of 11 December 1946 on the crime of genocide;

"Declaring that genocide is an international crime entailing national and international responsibility on the part of individuals and States;

"Noting that a large majority of the Governments of Members of the United Nations have not yet submitted their observations on the draft Convention on the crime of Genocide prepared by the Secretariat and circulated to those Governments by the Secretary-General on 7 July 1947;

"Considering that the Economic and Social Council has stated in its resolution of 6 August 1947 that it proposes to proceed as rapidly as possible with the consideration of the question of genocide, subject to any further instructions which it may receive from the General Assembly,

"Requests the Economic and Social Council to continue the work it has begun concerning the suppression of the crime of genocide, including the study of the draft Convention prepared by the Secretariat, and to proceed with the completion of a convention, taking into account that the International Law Commission, which will be set up in due course in accordance with General Assembly resolution 174 (II) of 21 November 1947, has been charged with the formulation of the principles recognized in the Charter of the Nuernberg Tribunal, as well as the preparation of a draft code of offenses against peace and security;

"Informs the Economic and Social Council that it need not await the receipt of the observations of all Members before commencing its work, and

"Requests the Economic and Social Council to submit a report and the Convention on this question to the third regular session of the General Assembly."

ANNEX III

RESOLUTION OF THE GENERAL ASSEMBLY, DECEMBER 11, 1946

AFFIRMATION OF THE PRINCIPLES OF INTERNATIONAL LAW RECOGNIZED BY THE CHARTER OF THE NÜRNBERG TRIBUNAL

The General Assembly,

Recognizes the obligation laid upon it by Article 13, paragraph 1, subparagraph a. of the Charter, to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification;

Takes note of the Agreement for the establishment of an International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis signed in London on 8 August 1945, and of the Charter annexed thereto, and of the fact that similar principles have been adopted in the Charter of the International Military Tribunal for the trial of the major war criminals in the Far East, proclaimed at Tokyo on 19 January 1946;

Therefore,

Affirms the principles of international law recognized by the Charter of the Nürnberg Tribunal and the judgment of the Tribunal;

Directs the Committee on the codification of international law established by the resolution of the General Assembly of 11 December 1946, to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offenses against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal.

ANNEX IV

RESOLUTION 177 (II) OF THE GENERAL ASSEMBLY

FORMULATION OF THE PRINCIPLES RECOGNIZED IN THE CHARTER OF THE NÜRNBERG TRIBUNAL AND IN THE JUDGMENT OF THE TRIBUNAL

The General Assembly

Decides to entrust the formulation of the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal to the International Law Commission, the members of which will, in accordance with resolution 174 (II), be elected at the next session of the General Assembly, and

Directs the Commission to

(a) Formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal, and

(b) Prepare a draft code of offenses against the peace and security of mankind, indicating clearly the place to be accorded to the principles mentioned in sub-paragraph (a) above.

ANNEX V

Table of correlation of articles of the text of Convention approved by the General Assembly, of the Ad Hoc Committee's draft and of the Secretariat's draft

Articles of the General Assembly text	Corresponding articles of the Ad Hoc Committee's draft	Corresponding articles of the Secretariat's draft
Preamble	Preamble	Preamble, par. 2 and 3.
1	Art. 1, Preamble, last par	Preamble, par. 2 and 3.
2	2, 3	1.
3	4	Definition of genocide as criminal acts in arts. 1; 2, 3.
4	5	4.
—	—	5.
5	6	6.
6	7	7, 9, 10.
7	9	8.
8	8	12.
—	—	11.
9	10	14.
—	—	13.
10	11	15.
11	12	16.
12	—	—.
—	—	17.
13	13	18.
14	14	19.
15	15	20.
16	16	21.
17	17	22.
18	18	23.
19	19	24.

ANNEX VI

DRAFT CONVENTION PREPARED BY THE SECRETARIAT

PREAMBLE

The high Contracting Parties proclaim that Genocide, which is the intentional destruction of a group of human beings, defies universal conscience, inflicts irreparable loss on humanity by depriving it of the cultural and other contributions of the group so destroyed, and is in violent contradiction with the spirit and aims of the United Nations.

1. They appeal to the feelings of solidarity of all members of the international community and call upon them to oppose this odious crime.

2. They proclaim that the acts of genocide defined by the present Convention are crimes against the Law of Nations, and that the fundamental exigencies of

civilization, international order and peace require their prevention and punishment.

3. They pledge themselves to prevent and to repress such acts wherever they may occur.

ARTICLE I

Definitions

(Protected groups)

I. The purpose of this Convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings.

(Acts qualified as Genocide)

II. In this Convention, the word "genocide" means a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development.

Such acts consist of:

1. Causing the death of members of a group or injuring their health or physical integrity by:

(a) group massacres or individual executions; or

(b) subjection to conditions of life which, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion are likely to result in the debilitation or death of the individuals; or

(c) mutilation and biological experiments imposed for other than curative purposes; or

(d) deprivation of all means of livelihood, by confiscation of property, looting, curtailment of work, denial of housing and of supplies otherwise available to the other inhabitants of the territory concerned.

2. Restricting births by:

(a) sterilization and/or compulsory abortion; or

(b) segregation of the sexes; or

(c) obstacles to marriage.

3. Destroying the specific characteristics of the groups by:

(a) forced transfer of children to another human group; or

(b) forced and systematic exile of individuals representing the culture of a group; or

(c) prohibition of the use of the national language even in private intercourse; or

(d) systematic destruction of books printed in the national language or religious works or prohibition of new publications; or

(e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.

ARTICLE II

(Punishable Offenses)

I. The following are likewise deemed to be crimes of genocide:

1. any attempt to commit genocide;

2. the following preparatory acts;

(a) studies and research for the purpose of developing the technique of genocide;

(b) setting up of installations, manufacturing, obtaining, possessing or supplying of articles or substances with the knowledge that they are intended for genocide;

(c) issuing instructions or orders, and distributing tasks with a view to committing genocide.

II. The following shall likewise be punishable:

1. willful participation in acts of genocide of whatever description;

2. direct public incitement to any act of genocide, whether the incitement be successful or not;

3. conspiracy to commit acts of genocide.

ARTICLE III

(Punishment of a Particular Offense)

All forms of public propaganda tending by their systematic and hateful character to provoke genocide, or tending to make it appear as a necessary, legitimate or excusable act shall be punished.

ARTICLE IV

(Persons Liable)

Those committing genocide shall be punished, be they rulers, public officials or private individuals.

ARTICLE V

(Command of the Law and Superior Orders)

Command of the law or superior orders shall not justify genocide.

ARTICLE VI

(Provisions concerning Genocide in Municipal Criminal Law)

The High Contracting Parties shall make provisions in their municipal law for acts of genocide as defined by Articles I, II, and III, above, and for their effective punishment.

ARTICLE VII

(Universal Enforcement of Municipal Criminal Law)

The High Contracting Parties pledge themselves to punish any offender under this Convention within any territory under their jurisdiction, irrespective of the nationality of the offender or of the place where the offence has been committed.

ARTICLE VIII

(Extradition)

The High Contracting Parties declare that genocide shall not be considered as a political crime and therefore shall be grounds for extradition.

The High Contracting Parties pledge themselves to grant extradition in cases of genocide.

ARTICLE IX

(Trial of Genocide by an International Court)

The High Contracting Parties pledge themselves to commit all persons guilty of genocide under this Convention for trial to an international court in the following cases:

1. When they are unwilling to try such offenders themselves under Article VII or to grant their extradition under Article VIII.

2. If the acts of genocide have been committed by individuals acting as organs of the State or with the support or toleration of the State.

ARTICLE X

(International Court competent to try Genocide)

Two drafts are submited for this section:

1st draft: The court of criminal jurisdiction under Article IX shall be the International Court having jurisdiction in all matters connected with international crimes.

2nd draft: An international court shall be set up to try crimes of genocide (vide Annexes).

ARTICLE XI

(Disbanding of Groups or Organizations Having Participated in Genocide)

The High Contracting Parties pledge themselves to disband any group or organization which has participated in any act of genocide mentioned in Articles I, II, and III, above.

ARTICLE XII

(Action by the United Nations to Prevent or to Stop Genocide)

Irrespective of any provisions in the foregoing articles, should the crimes as defined in this Convention be committed in any part of the world, or should there be serious reasons for suspecting that such crimes have been committed, the High Contracting Parties may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes.

In such case the said Parties shall do everything in their power to give full effect to the intervention of the United Nations.

ARTICLE XIII

(Reparations to Victims of Genocide)

When genocide is committed in a country by the government in power or by sections of the population, and if the government fails to resist it successfully, the State shall grant to the survivors of the human group that is a victim of genocide redress of a nature and in an amount to be determined by the United Nations.

ARTICLE XIV

(Settlement of Disputes on Interpretation or Application of the Convention)

Disputes relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice.

ARTICLE XV

(Language—Date of the Convention)

The present Convention of which the ------, ------, ------, and ------ texts are equally authentic, shall bear the date of ------.

ARTICLE XVI

(First Draft)

(What States may become Parties to the Convention. Ways to become Party to it)

1. The present Convention shall be open to accession on behalf of any Member of the United Nations or any non-member State to which an invitation has been addressed by the Economic and Social Council.

2. The instruments of accession shall be transmitted to the Secretary-General of the United Nations.

(Second Draft)

1. The present Convention shall be open until 31------1948 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation has been addressed by the Economic and Social Council.

The present Convention shall be ratified, and the instruments of ratification shall be transmitted to the Secretary-General of the United Nations.

2. After 1------1948 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State that has received an invitation as aforesaid.

Instruments of accession shall be transmitted to the Secretary-General of the United Nations.

ARTICLE XVII

(Reservations)

No proposition is put forward for the moment.

ARTICLE XVIII

(Coming into Force)

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the United Nations of the accession (or------ratification and accession) of not less than------Contracting Parties.

2. Accessions received after the Convention has come into force shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the United Nations.

ARTICLE XIX

(First Draft)

(Duration of the Convention)

1. The present Convention shall remain in effect for a period of five years dating from its entry into force.

2. It shall remain in force for further successive periods of five years for such Contracting Parties that have not denounced it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

(Second Draft)

The present Convention may be denounced by a written notification addressed to the Secretary-General of the United Nations. Such notification shall take effect one year after the date of its receipt.

ARTICLE XX

(Abrogation of the Convention)

Should the number of Members of the United Nations and non-member States bound by this Convention become less than_____ as a result of denunciations, the Convention shall cease to have effect as from the date on which the last of these denunciations shall become operative.

ARTICLE XXI

(Revision of the Convention)

A request for the revision of the present Convention may be made at any time by any State which is, a party to this Convention by means of a written notification addressed to the Secretary-General.

The Economic and Social Council shall decide upon the measures to be taken in respect of such a request.

ARTICLE XXII

(Notifications by the Secretary-General)

The Secretary-General of the United Nations shall notify all Members of the United Nations and non-member States referred to in Article XVI of all accessions (or signatures, ratifications and accessions) received in accordance with Articles XVI and XVIII, of denunciations received in accordance with Article XIX, of the abrogation of the Convention effected as provided by Article XX and of requests for revision of the Convention made in accordance with Article XXI.

ARTICLE XXIII

(Deposit of the Original of the Convention and Transmission of Copies to Governments)

1. A copy of the Convention signed by the President of the General Assembly and the Secretary-General of the United Nations shall be deposited in the Archives of the Secretariat of the United Nations.

2. A certified copy shall be transmitted to all Members of the United Nations and to non-member States mentioned under Article —.

ARTICLE XXIV

(Registration of the Convention)

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

ANNEX VII

DRAFT CONVENTION PREPARED BY THE AD HOC COMMITTEE

PREAMBLE

The High Contracting Parties

Declaring that genocide is a grave crime against mankind which is contrary to the spirit and aims of the United Nations and which the civilized world condemns;

Having been profoundly shocked by many recent instances of genocide;

Having taken note of the fact that the International Military Tribunal at Nürnberg in its judgment of 30 September–1 October 1946 has punished under a different legal description certain persons who have committed acts similar to those which the present Convention aims at punishing; and

Being convinced that the prevention and punishment of genocide requires international co-operation,

Hereby agree to prevent and punish the crime as hereinafter provided:

[SUBSTANTIVE ARTICLES]

ARTICLE I

[Genocide a crime under international law]

Genocide is a crime under international law whether committed in time of peace or in time of war.

ARTICLE II

["Physical" and "biological" genocide]

In this Convention genocide means any of of the following deliberate acts committed with the intent to destroy a national, racial, religious or political group, on grounds of the national or racial origin, religious belief, or political opinion of its members:

1. Killing members of the group;
2. Impairing the physical integrity of members of the group;
3. Inflicting on members of the group measures or conditions of life aimed at causing their deaths;
4. Imposing measures intended to prevent births within the group.

ARTICLE III

["Cultural" genocide]

In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion, or culture of a national, racial or religious group on grounds of the national or racial origin or religious belief of its members such as:

1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;
2. Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.

ARTICLE IV

[Punishable Acts]

The following acts shall be punishable:

(a) Genocide as defined in Articles II and III;

(b) Conspiracy to commit genocide;

(c) Direct incitement in public or in private to commit genocide whether such incitement be successful or not;

(d) Attempt to commit genocide;

(e) Complicity in any of the acts enumerated in this article.

ARTICLE V

[Persons liable]

Those committing genocide or any of the other acts enumerated in Article IV shall be punished whether they are heads of State, public officials or private individuals.

ARTICLE VI

[Domestic Legislation]

The High Contracting Parties undertake to enact the necessary legislation in accordance with their constitutional procedures to give effect to the provisions of this Convention.

ARTICLE VII

[Jurisdiction]

Persons charged with genocide or any of the other acts enumerated in Article IV shall be tried by a competent tribunal of the State in the territory of which the act was committeed or by a competent international tribunal.

ARTICLE VIII

[Action of the United Nations]

1. A party to this Convention may call upon any competent organ of the United Nations to take such action as may be appropriate under the Charter for the prevention and suppression of genocide.

2. A party to this Convention may bring to the attention of any competent organ of the United Nations any case of violation of this Convention.

ARTICLE IX

[Extradition]

1. Genocide and the other acts enumerated in Article IV shall not be considered as political crimes and therefore shall be grounds for extradition.

2. Each party to this Convention pledges itself to grant extradition in such cases in accordance with its laws and treaties in force.

ARTICLE X

[Settlement of disputes by the International Court of Justice]

Disputes between the High Contracting Parties relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice provided that no dispute shall be submitted to the International Court of Justice involving an issue which has been referred to and is pending before or has been passed upon by competent international criminal tribunal.

[FINAL CLAUSES]

ARTICLE XI

[Language, date of the Convention]

The present Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic shall bear the date of _____.

ARTICLE XII

[State eligible to become parties to the Convention. Means of becoming a party]

1. The present Convention shall be open until 31 _____ 194_____.[35] for signature on behalf of any Members of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

2. After 1 _____ 194_____[35] the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State that has received an invitation as aforesaid.

Instrument of accession shall be deposited with the Secretary-General of the United Nations.

---

[35] The dates for the time limits will have to be filled in according to the date of the adoption of the Convention by the General Assembly.

ARTICLE XIII

[Coming into force of the Convention]

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the United Nations of not less than twenty instruments of ratification or accession.

2. Ratification or accession received after the Convention has come into force shall become effective as from the ninetieth day following the date of deposit with the Secretary-General of the United Nations.

ARTICLE XIV

[Duration of the Convention. Denunciation]

1. The present Convention shall remain in effect for a period of five years dating from its entry into force.

2. It shall remain in force for further successive periods of five years for such Contracting Parties that have not denounced it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

ARTICLE XV

[Abrogation of the Convention]

Should the number of parties to this Convention become less than sixteen as a result of denunciations, the Convention shall cease to have effect as from the date on which the last of these denunciations shall become operative.

ARTICLE XVI

[Revision of the Convention]

1. Upon receipt by the Secretary General of the United Nations of written communications from one-fourth of the number of High Contracting Parties, requesting consideration of the revision of the present Convention and the transmission of the respective requests to the General Assembly, the Secretary-General shall transmit such communications to the General Assembly.

2. The General Assembly shall decide upon the steps, if any, to be taken in respect of such requests.

ARTICLE XVII

[Notification by the Secretary-General]

The Secretary-General of the United Nations shall notify all Members of the United Nations and non-member States referred to in Article XII of all signatures, ratifications and accessions received in accordance with Article XII and XIII, of the date upon which the present Convention has come into force, of denunciations received in accordance with Article XIV, of the abrogation of the Convention effected as provided by Article XV, and of requests for revision of the Convention made in accordance with Article XVI.

ARTICLE XVIII

[Deposit of the original of the Convention and transmission of copies to Governments]

The original of this Convention shall be deposited in the archives of the United Nations.

A certified copy thereof shall be transmitted to all Members of the United Nations and to the non-member States referred to under Article XII.

ARTICLE XIX

[Registration of the Convention]

The present Convention shal be registered by the Secretary-General of the United Nations on the date of its coming into force.

ANNEX IX

STUDY OF THE INTERNATIONAL LAW COMMISSION OF THE QUESTION OF AN INTERNATIONAL CRIMINAL JURISDICTION

The General Assembly,

Considering that the discussion of the Convention on the Prevention and Punishment of the Crime of Genocide has raised the question of the desirability and possibility of having persons charged with genocide tried by a competent international tribunal,

Considering that, in the course of development of the international community, there will be an increasing need of an international judicial organ for the trial of certain crimes under international law,

Invites the International Law Commission to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions;

Requests the International Law Commission, in carrying out this task, to pay attention to the possibility of establishing a Criminal Chamber of the International Court of Justice.

Hundred and seventy-ninth plenary meeting.
9 December 1948.

Mr. POLIER. With your permission, may I leave copies of my statement?

Senator MCMAHON. Yes.

Mr. POLIER. Thank you very much.

Senator MCMAHON. The committee wishes to thank you.

(The matter referred to is as follows:)

STATEMENT PRESENTED BY SHAD POLIER, OF THE AMERICAN JEWISH CONGRESS, URGING RATIFICATION OF THE GENOCIDE CONVENTION

Since its unanimous adoption by the General Assembly of the United Nations on December 9, 1948, the Genocide Convention has received wide endorsement by civic groups throughout the United States. These organizations have backed immediate Senate ratification, as compatible with American constitutional requirements and as consistent with the best American tradition. They have recommended that this action be taken quickly, for it is recognized that the Genocide Convention is an urgent need of the postwar world. Actions clearly outlawed by the new convention are committed daily in at least three of the five continents. The convention buttressed by the support of the family of nations will constitute an effective device in curbing and mitigating these acts.

The position of the American Jewish Congress in this area is well known. We are directly and immediately involved if only because the Jewish people have been the classical victims of genocide. On a more fundamental level, however, we have been the ardent advocates of the Genocide Convention because it embodies a vast step forward in the imposition of law and order through international agreement and because it cures an illogical, unjust, and potentially dangerous lack in every existing national criminal code. No criminal code anywhere now contains a provision analogous to that recommended by the Genocide Convention. The convention thus represents a substantial advance in developing and extending the conceptual scope of the criminal law.

In line with our interest in the convention, the World Jewish Congress, of which the American Jewish Congress is a constituent part, has prepared and transmitted a series of submissions to the various preparatory bodies set up by the United Nations to consider the various elements to be included within the convention and to formulate its text.

Recently, considerable distress has been occasioned in some quarters by the failure of a reputable organization, the American Bar Association, to endorse the Genocide Convention when it was debated before its house of delegates. Although representing, it is believed, a minority view on this issue, the American Bar Association enjoys generally a position of high standing and authority. Its contentions must therefore be answered. Since the report of the special committee on peace and law, which was sustained by the majority of the house of

delegates, singles out the views of the World Jewish Congress for critical comment, it is appropriate that we at this time reply to some of the major objections to the convention raised by the bar association and others.

Briefly, the major objections to the convention are that—

(1) It works a radical and unconstitutional change in the relation of the States and the Federal Government.

(2) It subjects American nationals to the jurisdiction of an international penal court which will furnish less protection against the invasion of personal rights than that obtaining in domestic courts.

(3) It inhibits freedom of expression.

(4) It exposes the United States to unusual risks, because under our Constitution a treaty immediately upon ratification becomes the "supreme law of the land."

(5) It obligates the United States to prevent or suppress genocide wherever it appears in the world.

(6) It encourages the intervention of foreign states in internal problems of the United States; e. g., by permitting lynchings and instances of racial segregation to be prosecuted as acts of genocide.

None of these objections have any merit. We submit that each one is founded on error and misapprehension as to the contents of the convention. We believe that in discussing each objection separately its fallaciousness will be evident.

1. Unconstitutional changes in the form of our Government?

The main criticism leveled at the convention by its opponents is that it fails to consider Federal constitutional requirements. The report of the Committee on Peace and Law of the Bar Association phrased it as follows:

"To impose a great new body of treaty law which will become the domestic law of the United States is a tremendous change in the structure of the relation of States and the Federal Government under our Constitution, of doubtful constitutionality, as shown by Professor Corwin. To deprive the States of a great field of criminal jurisprudence and place it in the Federal field alone, or under the jurisdiction of an international court, is truly revolutionary, not to be effected without amendment of our Constitution."

We submit, however, that ample authority exists for the United States to enter into the Genocide Convention and for Congress to enact the necessary penal legislation. Constitutional provisions relevant to the treaty power are article II, section 2, granting the President the power to make treaties when there is concurrent Senate ratification; article III, providing that the Constitution, laws, and treaties made under the authority of the United States shall be the "supreme law of the land;" article III, section 2, conferring jurisdiction upon the Supreme Court to consider cases arising under our treaties; and finally article I, section 10, forbidding the States to enter into treaties.

These provisions have traditionally been construed by the courts as conferring a distinct, substantive grant of power upon the Federal Government. *Missouri* v. *Holland*, 252 U. S. 416 (1920)). In not a single case has the exercise of this power ever been held excessive (Hyde, 2 International Law, sec. 502). The Supreme Court has clearly stated that treaties would be struck down only when they abrogate basic constitutional guaranties. Thus in *Geofrey* v. *Riggs* (133 U. S. 258, 267 (1889)) the Court declared:

"It would not be contended that * * * [the treaty power] * * * extends so far as to authorize what the Constitution forbids, or a change in the character of the Government or in that of one of the States, or a cession of any portion of the territory of the latter without its consent * * * But, with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiations with a foreign country." (See also *Asakura* v. *Seattle*, 265 U. S. 332 at 341; *Holden* v. *Joy*, 177 Wall. 211 at 243; *United States* v. *Pink*, 315 U. S. 203, at 230–3.)

The Supreme Court has also suggested that the treaty power is not subject to the same restrictions as are acts of Congress. It stated: "It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with but that a treaty followed by such an act could" (*Missouri* v. *Holland*, supra, 252 U. S., at 433). An article in a recent issue of the Yale Law Journal points out that it is generally conceded that the treaty power extends to all matters of national concern which require international measures of cooperation. (NOTE.—58 Yale L. J. 1142 at 1153.) Finally, congressional authority to enact enforcing legislation is firmly estab-

lished as coextensive with this broad treaty power (*Missouri* v. *Holland*, 252 U. S. at 133).

In the light of these holdings, it is clear that the Genocide Convention intends no unconstitutional purpose. No one denies that genocide is a matter which requires international measures of cooperation. Under the cases outlined above, the Federal Government therefore has a virtually unlimited power to enter into treaty arrangements affecting its control. Pursuant to this treaty, Congress will be empowered to enact legislation sufficient in extent to enable this country to fulfill its treaty commitments, and under article VI of the Constitution such treaties become the "supreme law of the land," superseding any State laws with which they may be in conflict. There is nothing in the slightest which is either unusual, unconstitutional, or disturbing about this procedure. Certainly it works no "tremendous change" in the structure of State-Federal relationships. On the contrary, this is the normal and inevitable result whenever this country undertakes to become a party to any international agreement. It is the logical consequence of the lack of "international sovereignty" by the States in consequence whereof the Federal Government appears as the sole party to all international compacts. Prof. Arthur L. Kuhn, coeditor of the American Journal of International Law, has observed, "from the very nature of our Government the treaty-making power must reside centrally or nowhere" (Kuhn, American Journal of International Law, July 1949, p. 501). Since it resides centrally, the Federal Government, if it is faithfully to carry out its obligations, must also be vested with the power to enforce through its whole territory all enabling legislation enacted pursuant to a treaty.

In considering any convention, the United States is always confronted with an identical choice: Either participation in international acts is sufficiently important to warrant partial invasion of the usual precincts of the States or it is not. If usual State prerogatives are made our primary concern, then the Federal Government is disabled from all international action dealing with matters presently within the jurisdiction of the States. But this is not a matter running to the constitutionality or unconstitutionality of any act. It relates only to an evaluation of the importance of each of the elements affected. With reference to the Genocide Convention, we can discern no serious loss—indeed no real loss of any kind—which would accrue to the States by its adoption, and we are cognizant of the great advantages to the entire world community which will flow from its ratification. We agree with the summation by Professor Kuhn:

"State rights cannot be an obstacle to the participation of the United States in a genocide convention; otherwise the power of the Nation would be prevented from acting effectively to combat this threat to the peace and security of all nations and the establishment of a civilized standard of international life" (Kuhn, American Journal of International Law, July 1949, p. 501).

Certainly there is no reason to regard the possibility of a transfer of authority from the State to the Federal Government under the Genocide Convention as truly revolutionary, as the bar association professes to do. Such a declaration presupposes that the Genocide Convention is the first international treaty to which the United States is a party creating an international crime or which treats of matters usually within State jurisdiction. On the contrary, as Prof. Quincy Wright has pointed out, there have been a number of crimes defined by treaties, including piracy, cable cutting, and misuse of the Red Cross symbols, over which the Federal courts have been given jurisdiction. (Proceedings of the American Society of International Law at its Forty-third Annual Meeting, p. 69.) Moreover, the convention for repression of slave trade (General Act for the Repression of African Slave Trade, July 2, 1890; Convention To Suppress the Slave Trade and Slavery, Sept. 25, 1926); for restriction of traffic in stupefying drugs (Convention and Final Protocol for the Suppression of the Abuse of Opium and Other Drugs, Jan. 23, 1912; Convention on Narcotic Drugs, July 13, 1931); and for the protection of migratory birds, August 16, 1916—all of which were readily entered into by this country without untoward consequence—are international agreements of precisely the same character as the Genocide Convention.

Finally, it is an obvious overstatement to describe the Genocide Convention as embracing a "great field of criminal jurisprudence." Spokesmen for the bar association position have admitted during debates on the convention that this country is not now engaged in genocide nor have we ever been so engaged. And it is unlikely that we shall undertake action of this character in the foreseeable future. Prosecutions in the United States under the Genocide Convention will undoubtedly be exceedingly rare. These rare cases can hardly

be regarded as imposing serious strains on Federal-State relationships. Instances of genocide assuredly will occur less often than violations of the conventions on traffic in slaves or opium, both of which have long been adhered to by the United States without causing any marked changes in the distribution of power between the States and the Federal Government.

2. An international penal court?

The second argument advanced in opposition to the convention is that it will require and make mandatory American participation in an international penal court. This assertion is not supported by anything to be found in any of the provisions of the convention. Article VI of the convention expressly stipulates that persons charged with genocide shall be tried by a competent tribunal of the State in which the act was committed or by an international penal tribunal only "with respect to those contracting parties which shall have accepted its jurisdiction." There is nothing in the convention which makes acceptance of such jurisdiction obligatory or which in any way commits States ratifying the convention to participate in such a tribunal should it one day be established.

As a practical matter, there is at the present time not even a draft for such a tribunal, and no one now has any definite information as to its organization or structure or as to the possible extent of its jurisdiction. At the time that such a court is in fact proposed, this country by open debate and by full consideration of its merits will then be able to make a considered and informed judgment as to whether or not to agree to its jurisdiction. Ratification of the Genocide Convention cannot prejudice this freedom of action in the future. In order to allay any remaining fears, an express reservation to this effect could be included in Senate ratification. The letter of transmittal of Acting Secretary of State Webb, however, has made clear the effect of the convention on this point, even as it stands, without reservations. Under the convention, Secretary Webb declared:

"No international tribunal is authorized to try anyone for the crime of genocide. Should such a tribunal be established, Senate advice and consent to United States ratification of any agreement establishing it would be necessary before such an agreement would be binding on the United States."

It is also argued by some that ratification of the convention constitutes approval "in principle" of an international penal court. As we have indicated above, we do not believe this to be true. But, even if it were, the United States has already not only approved of the principle of international penal courts but, at Nuremberg and Tokyo, has already actually participated in their operation. Such approval in principle would not, thus, constitute a departure from established American practice.

3. Is freedom of expression inhibited?

The American Bar Association also alleges that article III (c) of the convention making punishable any "Direct and public incitement to commit genocide" constitutes an infringement of the constitutional guaranty of free speech. This allegation overlooks or misinterprets a whole field of American law. The Genocide Convention proposes no new abridgement of the right of freedom of expression. Neither in the United States nor anywhere else in the world is there absolutely unrestrained freedom of speech. Incitement has a well-defined meaning in American law and in numerous instances has been made a punishable offense. Incitement to riot, to murder of officials, to mutiny and to other criminal acts, has long been regarded as criminal and in itself subject to penalty. (See 8 U. S. C. A. 137 and 163; 18 U. S. C. A. 2192.) The convention seeks only to apply these same principles to acts of genocide. In its present version the Genocide Convention by no means represents the extreme view. Originally efforts were made within the United Nations to outlaw all incitement to genocide. The compromise finally effected was that criminal responsibility would attach only to public and direct incitement.

The American Bar Association recognizes that acts of genocide are contrary to the moral law and abhorrent to all who have a proper and decent regard for the dignity of human beings. It would be foolhardly to permit those who incite to the commission of these odious and indefensible acts to evade responsibility. Genocide is utterly destructive. It is imperative that we erect strong defenses against it which shall eliminate it in all of its aspects. Those who conspire to genocide, those who incite to genocide and those who commit genocide are equally evil and equally dangerous. They must all be made subject to effective restraint.

4. Is this country exposed to unusual risks?

It is further argued by critics of the convention that by ratifying the convention this country would be placed in a peculiarly exposed position. It is claimed that since our Constitution causes treaties to become effective upon ratification, the provisions of the Genocide Convention will become the domestic law of the United States before being implemented in other countries. Again, this objection is unsound. Ratification of the Genocide Convention could in no way involve unilateral action by the United States. By its terms the convention remains inoperative until it has been ratified by the governments of at least 20 states.

Finally, it is not true that the convention would become domestic law capable of imposing punishment upon nationals of the United States for its infraction as soon as ratification is completed. By its own terms, the Genocide Convention is not self-executing. Article V provides that "the contracting parties undertake in accordance with their respective constitutions to enact the necessary legislation to give effect to the provisions of the present convention * * *." Thus, specific legislation in addition to ratification is necessary to put the convention into effect. It would be impossible for penalties to be affixed in the absence of such supplementary legislation. The convention itself stipulates no sanction and determines no punishments. Because each of the contracting parties to the convention is equally obligated to enact enabling legislation, the convention will not, in any realistic sense, become the domestic law of the United States at any earlier time than it becomes the domestic law of any other participating state.

5. Is this country obligated to prevent genocide throughout the world?

Still other opponents of the convention have expressed apprehension that the convention will require affirmative action of the United States to prevent or suppress genocide wherever it appears in the world. The terms of the convention fail to disclose any tenable basis for these fears. The convention obligates contracting parties to prevent and punish genocide only in their own territory. With reference to acts of genocide perpetrated in other states, the contracting parties are authorized under article VIII of the convention only to call upon the competent organs of the United Nations to take appropriate action under the Charter of the United Nations. No country is required, nor is it permitted, to take unilateral action to punish or restrain acts of genocide committed in a foreign territory. As Secretary Webb made clear in his letter of transmittal to the Senate, article VIII of the convention "merely affirms the right of the United Nations to call upon an organ of the United Nations in matters within its jurisdiction." The narrowness of the application of article VIII is perhaps best illustrated by the fact that in the sixth committee of the United Nations, charged with drafting the convention, this article was provisionally deleted on the ground that it did not comprise anything not already contained in the United Nations Charter (A/C.6/SR 101, p. 3). Considering its limited functions it would seem obvious that this article cannot support the allegation that under its authority this country will be required to embark upon a world-wide crusade.

6. Will other countries be permitted to interfere with our internal problems?

It is claimed that the Genocide Convention will be invoked against lynchings and against racial segregation within the United States and that the convention will therefore permit international agencies to meddle in problems which are peculiarly domestic.

These arguments are founded upon a complete misconception of the intended scope of the convention. Under the convention definition of genocide contained in article II, to constitute the crime an act must be coupled with a specific "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such." This definition of intent will not markedly affect American institutional patterns. As was noted in the Yale Law Journal:

"Where the requisite intent is lacking, acts of violence might constitute murder or assault, but they could never constitute the crime as defined in the convention. In a lynching, for example, while the participating individuals might be tried for murder, or for conspiracy to commit murder, they could never be tried for genocide unless the requisite intent accompanied commission of the act. Similarly, racial segregation could not constitute the crime, unless joined with intent to destroy the segregated group. Only segregation with purposes similar to those motivating Nazi use of concentration and labor camps would violate the treaty agreement. Drafted as the convention is, its application in America would be largely limited to suppression of future brown shirt movements, if and when such groups were to employ genocidal measures in attaining their ends" (note, 58 Yale Law Journal 1142 at 1151–1152).

Article II does include an intent to destroy a group in part as falling within the definition of genocide but we must not misunderstand the textual significance of these words. Historically, no group has ever been totally exterminated by acts of genocide. To insure that the chance survival of some portion of a group would not permit the perpetrators of mass murder to evade responsibility, the framers of the convention were careful to define acts of genocide so as to include the destruction of a group in whole or in part. It is clear from the debates which preceded adoption of this provision that the words "in part" intended to denote a substantial portion of a group and that the oppression of particular individuals was not within their contemplation. In fact, efforts by France to extend the definition of genocide to include the persecution of individuals were expressly rejected by the General Assembly (A/C.6/224).

CONCLUSION

The Genocide Convention was drafted with care and circumspection. Every caution has been observed to safeguard the contracting parties from becoming embroiled in political disputes or from forfeiting vital or essential elements of their sovereignty. Far from vitiating traditional American practices, the convention extends them and gives them contemporary significance. The convention is an expression of our revulsion with those men and those philosophies which have little regard for human rights.

Our Consitution and our legal system provide ample authority for our entry into this agreement. Opposition to the Genocide Convention can only be explained as stemming from lack of information about American constitutional practices, the provisions of the convention itself or the political realities throughout the world. Opposition to the convention has perhaps been best described by Prof. Myres Smith McDouglas in addressing the forty-third annual meeting of the American Society of International Law.

"Opposition to the convention moves from a complete misconception of the conditions under which we live today, a complete misunderstanding of the nature and the role of international law, a complete misunderstanding of our constitutional requirements and of the obligations imposed by the United Nations Charter, and a tragic failure to consider what rational action calls for under the conditions of the present time."

STATEMENT OF JOHN E. LEE, OF THE BOARD OF TRUSTEES OF THE WASHINGTON ETHICAL SOCIETY, IN SUPPORT OF THE RATIFICATION OF THE GENOCIDE CONVENTION

The Washington Ethical Society is a religious fellowship in which faith in man is paramount and in which ethics is the common ground. Accordingly, the board of trustees of the society cannot but be deeply concerned that the United Nations Convention on the Prevention of Genocide shall have prompt ratification by the Senate of the United States.

It is needless for us to recount in detail the long catalog of atrocities which have been perpetrated upon human groups by demagogs and tyrants in almost every area. It is a tragic lack in the development of our institutional patterns that although the one constant limitation on human behavior that runs through all forms of social organization, even the most primitive, is that there shall be no killing of one member of a group by another, and although the outlawing of homicide is ageless and universal, yet until now even the most sophisticated societies have not evolved a technique for preventing and punishing genocidal acts.

The convention which the Senate is now being asked to ratify amounts only to a method of filling a legal vacuum. Once we have agreed upon the fundamental proposition that man may not kill with impunity, it is unthinkable that we should not extend this idea to embrace the destruction of groups as well as individuals. The view that the murderer of one man must incur the death penalty whereas the murderer of whole groups of men is to be absolved of any legally cognizable guilt is an absurdity.

The Genocide Convention is consonant with the best American tradition. It is consistent with constitutional principals and with the organization of our political institutions under the Constitution. The convention itself imposes no sanctions, fixes no penalties, determines no sentences. It merely provides the authority for subsequent domestic acts which will accomplish these purposes

The crime of genocide can be controlled effectively only by international agreement. Prohibitions against genocide can be meaningful only when the duty to curb such action is owed to a concert of nations empowered to protest failure of its implementation. The Genocide Convention creates this world community. It creates an international climate in which each nation owes to its neighbor an affirmative responsibility to conduct itself so as to discourage and prevent all internal efforts to destroy any racial, national, or ethnic group. We believe the development of such international responsibility is salutary.

It is significant that no one has voiced any opposition to the ends sought to be achieved by the convention. But it is not enough to entertain noble thoughts in the abstract. Moral sentiments are incomplete until they become sheathed in a concrete, legally significant degree. Failure to act in consonance with principle is as inexcusable as the failure to have principles to begin with. Failure to act practically to outlaw genocide is as inexcusable as the outright condonation of genocide.

The United States, through its United Nations Delegation, has already taken a position of leadership in sponsoring passage of the Genocide Convention. In the light of our active endorsement of the Genocide Convention in the United Nations, rejection of the convention now by the Senate will not be regarded lightly by the nations of the world; rejection would seem inevitably an open declaration that the Genocide Convention is insupportable.

To avoid this conclusion it is necessary that the Senate ratify the convention immediately. This Nation has achieved a position of world leadership. Seven nations have as of this time ratified the Genocide Convention. Thirteen more are needed to give it effect. The action taken by this Government will be crucial and decisive, for it is well established that smaller nations are waiting our cue as the acknowledged leader of the liberal democratic powers. These 13 additional signatures may never be obtained if this country fails to ratify. Upon our decision rest the hopes of thousands of people who have come to look to the United States more than to any other nation for help and assistance in a troubled world.

STATEMENT SUBMITTED BY DAVID L. ULLMAN, CHAIRMAN, LEGISLATIVE INFORMATION COMMITTEE, NATIONAL COMMUNITY RELATIONS ADVISORY COMMITTEE, IN SUPPORT OF RATIFICATION BY THE UNITED STATES SENATE OF THE UNITED NATIONS GENOCIDE CONVENTION

The National Community Relations Advisory Council is the national coordinating and policy-formulating body for six major national Jewish organizations, namely, the American Jewish Committee, the American Jewish Congress, the Anti-Defamation League of B'nai B'rith, the Jewish Labor Committee, the Jewish War Veterans of the United States, and the Union of American Hebrew Congregations, and the following 28 Jewish community councils in all parts of the United States: Akron Jewish Community Council; Jewish Public Relations Council for Alameda and Contra Costa Counties, Calif.; Baltimore Jewish Council; Jewish Community Council of Metropolitan Boston; Jewish Community Council, Bridgeport, Conn.; Brooklyn Jewish Community Council; Cincinnati Jewish Community Council; Jewish Community Council, Cleveland, Ohio; Detroit Jewish Community Council; Jewish Community Council of Essex County, N. J.; Community Relations Committee of the Hartford, Conn., Jewish Federation; Indiana Jewish Community Relations Council; Indianapolis Jewish Community Relations Council; Community Relations Bureau of the Jewish Federation and Council of Greater Kansas City; Community Relations Committee of the Los Angeles Jewish Community Council; Milwaukee Jewish Council; Minnesota Jewish Council; New Haven Jewish Community Council; Norfolk Jewish Community Council; Philadelphia Jewish Community Relations Council; Jewish Community Relations Council, Pittsburgh; Jewish Community Council, Rochester; Jewish Community Relations Council of St. Louis; Southwestern Jewish Community Relations Council; Jewish Community Council of Springfield, Mass.; Jewish Survey and B'nai B'rith Community Committee of San Francisco; Jewish Community Relations Council of the Jewish Federation of Youngstown, Ohio; Jewish Community Council of Washington, D. C. These national organizations and community councils together number among their affiliates an overwhelming preponderance of the Jewish population of the United States.

The national organizations affiliated with the National Community Relations Advisory Council appeared before the Senate Foreign Relations Subcommittee on Ratification of the Genocide Convention in the course of its hearings, to urge that the subcommittee recommend to the Senate that it ratify the Convention on the Prevention and Punishment of the Crimes of Genocide. On behalf of the community member agencies of our council as well, we associate ourselves with their presentations, in all substantial respects, and join in respectfully urging a favorable report from this subcommittee.

There is no need to rehearse the constitutional and other legal arguments which have already been made. It is not necessary by rhetoric to seek to establish the validity of truisms; that of all the crimes in the annals of man, genocide is the most horrible and appalling; that it is a crime which destroys economic goods, and makes a grim mockery of every cultural and spiritual value which lifts man above mere bestiality; that any act of genocide anywhere is a threat to the already delicately balanced peace of the world. Nor is it necessary to speculate as to whether or not this convention will be fully effective in preventing genocide or in punishing the perpetrators of genocidal acts. The convention will be as effective as the signatory nations make it. First, let us pledge ourselves.

The Jewish people have been perhaps more often than any other the victims of genocidal crimes. Not fewer than 6,000,000 of them were destroyed by the diabolically efficient program of the Nazis, but this experience was unique in measure only, not in kind. Yet it is not only in the hope of erecting a barrier in international law against further efforts to exterminate Jewish populations that we urge ratification by the United States of the Genocide Convention. Other peoples, in our own time and in earlier times, have been the helpless innocent victims of genocidal assaults. Surely, there is enough conscience and moral revulsion now in the world to put an end to these brutalities.

There are immediate reasons in national interest, too, for us to ratify the Genocide Convention. So long as the world, in cynicism or in insular complacency, allows genocidal assaults to go unpunished, the equality of men will remain a pious vision and democracy will languish everywhere. We Americans have learned well that only where genuine democracy is practiced can all men be secure in their Godgiven rights to be different. Our recent involvement in world war, and our present cold war struggle with an inimical way of life, have taught us that we cannot in peace and security hope for long to pursue our democratic way at home while tyrrany and terror reign undeterred in other parts of the world.

But above all else, this convention is an adjuration to the conscience of the world. It will stand as a statue to all future generations and will mark the time when the nations in noble unison resolved that such ghastly carnage as the Nazis wrought should not again be visited upon any of the peoples of the earth.

There is no American who takes any pride in his national heritage of tradition who does not remember pridefully that the members of the United States delegation to the United Nations took a leading part in formulating the Genocide Convention and in securing its adoption. Nothing less, indeed, would have been in keeping with the role which the United States has always played in the world as conservator and protector of morality and human values. It would have been fitting had the United States been the first to ratify this bold and noble instrument of international justice. Others have moved more quickly than we to deprive us of that distinction. It is imperative now that we act without unnecessary delay to place the name of the United States beside the names of other peace-minded peoples, on this keystone in the arch of a new and better world law.

Already, because our concurrence has not yet been given, there has arisen skepticism as to the sincerity of our support of the United Nations. Already our detractors plant suspicions and doubts in the minds of many whose friendship and good will we seek to cultivate. We must move quickly to give the world this sign of our devotion to humanity and of our determination to foster and sustain international morality.

The organizations which comprise the National Community Relations Advisory Council earnestly hope that the Senate Foreign Relations Subcommittee on the Genocide Convention will recommend to the Senate the ratification of the Genocide Convention, and thus give it the prestige and status which only our Nation's endorsement can carry in the contemporary world.

NATIONAL PEACE CONFERENCE,
New York 18, N. Y., January 22, 1950.

Hon. BRIAN MCMAHON,
Chairman, Subcommittee on Genocide Convention of the Senate Foreign Relations Committee, Washington, D. C.

DEAR SENATOR MCMAHON: Thank you for your courtesy in acknowledging our request to testify before the subcommittee on the Genocide Convention by offering us time tomorrow, January 23, or, if necessary, on the following day. In order to cooperate with you as well as with those of our member organizations who have asked for individual time to testify, we are relinquishing whatever moments you have been good enough to reserve for us. Instead, we will appreciate your accepting this communication and the attached memorandum as the testimony offered on behalf of the conferees of the National Peace Conference in support of the prompt ratification by the Senate of the United States of the United Nations Genocide Convention.

In addition to the testimony submitted herewith on behalf of the conferees of the National Peace Conference, we are also enclosing testimony that we have been asked to transmit to you by one of our member organizations, the World Government Association.

With appreciation for your courtesy in including this written testimony in the record, I remain.

Faithfully yours,

JANE EVANS, *President.*

Copies to Mr. C. C. O'Day, Clerk, Senate Foreign Relations Committee.

TESTIMONY ON BEHALF OF THE CONFEREES OF THE NATIONAL PEACE CONFERENCE IN SUPPORT OF RATIFICATION BY THE SENATE OF THE UNITED STATES OF THE UNITED NATIONS GENOCIDE CONVENTION

The conferees of the National Peace Conference have taken action on three separate occasions as noted below:

(1) Upon motion duly made and seconded it was

Voted unanimously, That the conferees of the National Peace Conference, voting as individuals, at a regular session in New York City on January 19, 1948, call upon the United States delegation to the United Nations and the United States delegation members of the Economic and Social Council of the United Nations to support the Convention on Genocide and take active steps to promote the conclusion of such a convention; It was further

Voted unanimously, That the National Peace Conference call upon its member organizations to draw public attention to the need of such a Convention on Genocide and urge their constituent groups to take similar action.

(2) At a regular meeting held in New York City on April 18, 1949, the conferees of the National Peace Conference, voting as individuals

Voted unanimously, To request the Secretary of State to submit the Convention Prohibiting the Crime of Genocide to the Senate of the United States for approval. It was further

Resolved, To urge organizations members of the National Peace Conference to call to the attention of their constituents the importance of prompt ratification of the convention by the United States and to request member organizations to take appropriate action to support and encourage ratification.

(3) Upon motion duly made and seconded it was

Voted unanimously, That the conferees of the National Peace Conference, having followed with the greatest interest the country-wide discussion on the question of the ratification of the Convention on Prohibiting he Crime of Genocide, voting as individuals, reaffirm their continued support of the Convention and urge its early ratification by the Senate of the United States at the present session of Congress.

On religious, moral, ethical and social grounds, the conferees of this organization are firmly convinced of the rightness of the Genocide Convention. The conferees regret that the United States, which has long been in the forefront of the struggle for democratic and humanitarian ideals and whose delegation at the United Nations led in the formulation of the Genocide Convention, will not be the first country to ratify this convention. Nevertheless the conferees deeply hope that the United States of America, through the action of the United States Senate in ratifying this convention, will be among the first 10 nations of the United Nations to incorporate the convention in treaty form as part of the law of the land.

The conferees believe that the political advance of mankind in consonance with democratic traditions will be enhanced through the adoption, ratification, and enforcement of the Genocide Convention.

AMERICAN CIVIL LIBERTIES UNION,
New York, N. Y., January 16, 1950.

Senator BRIEN MCMAHON,
Chairman, Subcommittee on Genocide Hearings,
Senate Office Building, Washington, D. C.

DEAR SENATOR MCMAHON: Instead of appearing for oral support of the Genocide Convention we ask you to have the enclosed statement inserted in the record.

Sincerely yours,

JOHN HAYNES HOLMES,
Chairman.
ARTHUR GARFIELD HAYS,
General Counsel.
ROGER N. BALDWIN,
Chairman, International Affairs.

Gentlemen, the American Civil Liberties Union desires to express to you its support of the ratification by the Senate of the convention on genocide adopted by the United Nations Assembly in December 1948, and signed for United States by its diplomatic representatives.

We have examined the objections raised to ratification and regard them as without substantial merit. The United States is not committed by ratification to accepting any international jurisdiction, and whatever action our country takes will be determined by legislation to be adopted by the Congress.

We see no provision in the convention out of line with American principles. Whatever question may be raised as to incitement to genocide as possibly affecting freedom of speech and press can be covered by more precise provisions in a statute. The same may be said of the provision concerning "mental harm" as one aspect of a crime.

Since the United States took the leadership in the United Nations in promoting the adoption of the convention, we trust that the Senate will support by ratification the action of our representatives.

POST WAR WORLD COUNCIL,
New York 3, N. Y., January 18, 1950.

Senator BRIEN MCMAHON,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR MCMAHON: I am writing to you as chairman of the subcommittee which is holding a hearing on the Genocide Convention. I should like to be recorded myself, and to have this organization of which I am chairman, recorded as strongly supporting ratification of this document.

I do not think that the ratification of this convention will end such crimes as it would appear the Russian Government is still perpetrating against the peoples of the little Baltic States. I do believe that ratification of the document would have a moral and ultimately practical effect in ending one of the most horrible practices of the years through which we have lived. The United States cannot afford to miss a chance for leadership by prompt ratification of the convention.

I content myself with this brief statement because I am sure that the case will be adequately presented by witnesses who will appear before you. I shall be glad to have this letter entered on your record.

While I am writing you, may I also record the deep opposition of myself and this organization to authorization of the production of the hydrogen atomic bomb. The fact that the scientists now believe that it can be produced ought to be the occasion for Presidential appeal to the nations of the world, in patricular to Russia, to consider the universal benefits that would come from universal disarmament down to a police level. I am increasingly skeptical of the value of limitation of atomic weapons apart from general and comprehensive disarmament which would, of course, require a strengthening of the UN with provisions through a quota system for international security.

Sincerely yours,

NORMAN THOMAS, *Chairman.*

Copy to: Senator Arthur H. Vandenberg, Senate Office Building, Washington, D. C.

POLISH AMERICAN CONGRESS, INC.,
Chicago, Ill., January 19, 1950.

The Honorable Senator BRIEN MCMAHON,
Chairman, Subcommittee of the Foreign Relations Committee for Ratification of the Genocide Convention, Senate Office Building,
Washington, D. C.

MY DEAR SENATOR: The Polish-American Congress in the United States, representing more than 6,000,000 American citizens of Polish extraction, is deeply interested in and urges the ratification of the Genocide Convention which is now under consideration by your subcommittee.

The crime of genocide, which is defined in the convention as the intentional destruction of national, religious, racial, and ethnic groups, has affected, and still affects, very strongly the fate of the Polish Nation in Europe under the brunt of the two invaders: Nazi Germany and Soviet Russia. Millions of Polish citizens have been slaughtered by the two invaders, either directly, or by their having been submitted to slow death in concentration and slave labor camps in Germany or in Siberia. Families have been separated for the purpose of stopping procreation and interrupting the continuity of the Polish Nation. Polish women have been subjected to sterilizations, compulsory abortions, mutilations, for the purpose of medical experimentations or in a beastly game of wanton brutality. Polish intellectuals, teachers, writers, artists, and religious leaders have been removed by violence and destroyed in order to deprive the nation of the benefit of national and religious guidance. By those acts the invaders hoped, and still hope, to deprive the nation of the forces of cohesion so that the nation as such might be more easily destroyed.

In all of these acts both invaders have shown, and are still showing, the intent to destroy the nation in whole or in part, as a nation, as defined in the Preamble of article II of the convention.

Poland was one of the first nations in central Europe to embrace Christianity and to develop the concept of western civilization. The destruction of the Polish Nation means also the obliteration of its culture and religious life, which have contributed greatly to modern civilization. Millions of Poles throughout the world are still mourning the losses of those who were victims of Nazi genocide in Oswiecim (Auschwitz) and of Soviet genocide in Katyn.

In this regard, the Katyn Forest massacre in the spring of 1940 of over 10,000 Polish officers by Soviet Russia, stands as one of the most heinous genocides of modern times and should be raised before the forum of the United Nations.

Being aware of the fact that the crime of genocide is practiced against the Polish Nation, the Polish-American Congress took early action in drawing the attention of the world to this crime and has been supporting constantly the Genocide Convention in resolutions, and otherwise.

The Senate of the United States should act decisively and promptly on a crime like genocide, which is a blot on our civilization. The ratification of the Genocide Convention will provide a useful instrument for the preservation of standards of decency in the community of nations.

I shall be grateful to you for arranging that this statement be included in the record of the hearings.

Respectively yours,

CHARLES ROZMAREK,
President, Polish-American Congress.

BUSINESS AND PROFESSIONAL WOMEN'S CLUB,
Meadville, Pa., September 22, 1949.

SENATOR MCMAHON,
Washington, D. C.

DEAR SENATOR MCMAHON: The Meadville Business and Professional Women's Club hereby files a statement in favor of the Genocide Convention. It is our belief that the convention is fully in line with American tradition and that ratification of the convention will strengthen the United Nations and its prestige in the world. It fould also be a measure of economy in the United States since hundreds of millions of dollars have already been spent here for rehabilitation of survivors of genocide.

Yours truly,

MARY AGNES FEYAS,
Corresponding Secretary.

THE CATHOLIC ASSOCIATION FOR INTERNATIONAL PEACE,
Washington, D. C., January 24, 1950.

Hon. BRIEN MCMAHON,
Chairman, Senate Subcommittee on the Genocide Convention,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: I wish to transmit the attached statement for consideration by the Senate Subcommittee on the Genocide Convention.

Yours very truly,

RITA SCHAEFER,
Committee Secretary.

STATEMENT SUBMITTED BY MOST REV. JOHN J. WRIGHT AND THOMAS H. MAHONY, CO-CHAIRMEN, JURIDICAL INSTITUTIONS SUBCOMMITTEE, CATHOLIC ASSOCIATION FOR INTERNATIONAL PEACE, FOR UNITED STATES RATIFICATION OF THE CONVENTION ON GENOCIDE

The juridical institutions subcommitte of the Catholic Association for International Peace has supported the work of the United Nations, from its beginning, and the participation of the United States, in the drafting of a convention on the prevention and punishment of the crime of genocide.

As this work has now been completed and the convention has been adopted by the United Nations General Assembly, we urge its ratification by the United States Government.

The importance and necessity for such a convention is emphasized by the examples of the crime of genocide which we have witnessed in our own time. A start—as effective a start as possible—must be made to prevent further perpetration of this crime. The way has been indicated by the United Nations in adopting the convention on genocide. It is imperative that those nations which recognize the heinousness of acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such, do their part by adhering to this covenant which outlaws such acts.

The position which the United States holds in world affairs today, and in particular our belief in the good and right, obliges us to take whatever steps we can in defense of humanity. This occasion to ratify a convention on the prevention and punishment of the crime of genocide is an unique opportunity for us to act upon the principles by which we claim to live.

STATEMENT OF THE AMERICAN ASSOCIATION OF SOCIAL WORKERS ON THE GENOCIDE CONVENTION PACT

Mr. Chairman and members of the committee, American professional social workers, in common with all other citizens, have a responsibility to cooperate for the welfare of the people in our own and the world community.

The American Association of Social Workers represents 13,000 members in 120 chapters located in practically every State of the Union and Puerto Rico and Hawaii. Every phase of the social services are represented in our association. Our collective experiences, which have brought us through the years in close contact with humanitarian problems have given us, perhaps, a special status in dealing with those problems which affect the everyday lives of people who are in need.

The nature of our services is never of the sensational type. It is a labor of love for our fellowmen which motivates our profession. We are therefore concerned with the fundamental and basic tenets of governments and their responsibilities to assure for mankind the kind of world in which peoples of all races, creeds, and colors can live in peace and freedom.

We are grateful that our own country has made rapid strides in planning and legislating for the welfare of our own people as well as initiating international moves which have as their basis the welfare of people everywhere. No move ever made by this Government, however, is more important than that which expresses and mobilizes the forces of public opinion, here and elsewhere, in the field of moral and spiritual guidance.

It is because we constantly deal with humanitarian problems that we realize the terrible urgency of burning into the conscience of mankind the need to develop an international morality and codes of humane practices which will forever obliterate from men's hearts and minds the curse of genocide. To us, as to

others, the concept of the "dignity of man" has real meaning for we have devoted our lives in helping to shape for those who are in need the concept that the human personality is sacred and must not become a toy for governments to play with as they see fit.

We see in these hearings and in the coming senatorial debate on the genocide pact an opportunity for America to once more assume its historic role as a leader of the moral forces of the world. Passage by the Senate of the genocide covenant will have an incalculable effect on world opinion. It will give real meaning to both the "physical" and "cultural" aspects of the genocide pact. It will enable minorities everywhere to live in the secure knowledge that their language, culture, libraries, schools, and places of worship will be safeguarded under international sanction and guaranties. It will mean for people throughout the world the safety of their own persons and their right to live under conditions which will assure them political liberty. One sees in such a pact a nobility of purpose which far transcends in importance any other measures which are now being used to alleviate suffering throughout the world. For only through a world at peace—a world which lives by the moral precepts of God and man—can we expect to see nations sitting around the table, resolving their many difficult problems.

One can truly sense in the midst of these hearings the presence of the millions of Christians, Armenians, Poles, and Jews who were the victims of genocidal practices. The world must never permit again the bestial practices of Lidice and Buchenwald.

Mr. Chairman, have no fear as to the ultimate outcome of your committee's deliberations. We are confident that your committee and the Senate itself will once again reiterate the great American doctrine which is embedded in the mind and soul of every man, woman, and child in this country—that we are dedicated to a continuance of the principle of "life, liberty, and the pursuit of happiness" for ourselves and for mankind.

PLEAS BY RABBI ELY E. PILCHIK, TEMPLE B'NAI JESHURUN, NEWARK, N. J., FOR THE RATIFICATION OF THE GENOCIDE CONVENTION BY THE UNITED STATES SENATE

Gentlemen of the committee, it is my privilege to make this plea on behalf of the Central Conference of American Rabbis, a body of liberal Jewish clergy ministering to over 400 congregations embracing over 100,000 affiliated families, across the Nation.

As teachers of religion—the oldest religion in western civilization—we expressed ourselves officially on this matter in conference assembled at Kansas City, Mo. in June 1948 in these words: "We vigorously denounce the premeditated destruction of entire religious, national, and racial groups as a wicked and dastardly crime against humanity" (C. C. A. R. Yearbook, vol. LVIII, p. 129).

It was our Bible and our unceasing teaching of that Bible for 2,500 years which stamped in the minds and hearts of men the commandment "Thou shalt not kill." We believe then and we believe now that this is an expression of the will of the God of all mankind. Because of our insistence upon this commandment and other Divine laws we have borne the brutal brunt of all tyrants who set themselves up as rivals to the Almighty Creator of the universe. As victims of attempted genocide we plead for a law against genocide. Our plea rises not only from a genuine idealism but from the gas chambers and the mass graves of over 5,000,000 innocents whose sole offense was to teach their children that God commanded man "Thou shalt not kill."

We believe, and we have been slaughtered for this belief, that man is created in the image of God. That killing man is killing a member of the family of God. That killing groups is a deliberate act to extricate all trace of God on earth. We believe that a world without God at the core of its conscience is a world doomed to utter destruction.

We believe that the United States, blessed with strength, dedicated to peace, founded to preserve and upbuild the dignity of man should take the lead in the United Nations by ratifying the Genocide Convention.

As teachers of religion in America we are zealous for the prestige of America in the family of nations. As students of scientific development we are alerted to the ease and speed with which genocide can be achieved by modern weapons. As men teaching children to do the right we want to point to our Nation as an exemplar of the right.

If it be the law of the land to punish an individual who violates the commandment "Thou shalt not kill," then we plead, let it be ha law of the nations to punish a nation who violates this commandment a millionfold.

America is great because its underlying philosophy is moral and Godly. America can demonstrate her greatness before the eyes of all the children of God by thunderously ratifying the Genocide Convention. Gentlemen of the Senate, we urge you to endorse this Godly law.

LATVIAN RELIEF, INC.,
New York 6, N. Y., January 23, 1950.

Hon. BRIEN MCMAHON,
Chairman, Genocide Convention Subcommittee,
United States Senate, Washington, D. C.

SIR: On behalf of Latvian Relief, Inc., I respectfully wish to express our support in favor of the ratification of the Genocide Convention, as a humanitarian measure.

It is our opinion that this convention is a most timely and necessary expression of elementary moral principles, which by the instrument of this convention are being cast in the form of treaty norms and international law.

Therefore, we respectfully urge the ratification of the Genocide Convention.

Sincerely yours,

HARRY W. LIELNORS, *President.*

MEMRANDUM ON THE GENOCIDE CONVENTION, SUBMITTED BY THE UNITED LATVIAN AMERICAN COMMITTEE, NEW YORK 28, N. Y.

NEW YORK, *January 23, 1950.*

Re Genocide in Latvia.

To the United States Senate, Foreign Relations Committee.

GENTLEMEN: In June 1940, Latvia, Lithuania, and Estonia were brutally occupied by Soviet armed forces. In August all three Baltic countries were forcilby, against the will of the people, incorporated into the Soviet Union, an act which never has been recognized by the United States.

EXPANSION THE KEY TO SOVIET POLICY

The Soviets base their regime and their expansion, like the Nazis did, on large scale annihilation not only of "undesirable and hostile" elements, but of whole classes of people, and even nations. Rather than executing them outright, the Soviets imprison huge masses of innocent people and work them slowly to death in prison labor camps of Siberia, central Asia and the far north.

OUTRIGHT GENOCIDE

Soviet abuse of justice and crimes against international law have, with regard to the Baltic nations, assumed the character of outright genocide. The first mass arrests and deportations of Latvians to prison labor camps took place on June 13 and 14, 1941, when some 15,000 men, women, and children, routed from their beds, were packed into waiting trains, to be transported to unknown destinations in far-away desolate regious of the U. S. S. R., where they are kept, prisoners in labor camps, under conditions of exposure, inhuman privation, and compulsory work quotas, all calculated to destroy them.

SEROV'S INSTRUCTIONS

In July of 1941, after Latvia had been temporarily occupied by the Germans, an NKVD order, signed by Serov, Acting People's Commissar of State Security, was found. This is the infamous "Instructions, regarding the manner of carrying out operations of deporting anti-Soviet elements from Lithuania, Latvia, and Estonia." It reads, in part: "The entire family is to be taken to the loading station in one vehicle; but on arriving to the station, the head of the family is to be separated from the rest * * *" in order to be transported separately to special camps in distant regions.

CATEGORIES CLASSIFIED AS ANTI-SOVIET

A secret instruction of the NKVD, taken from intercepted checkists in 1941, lists 37 categories of anti-Soviet elements in Latvia, among them: Members of the Latvian defense guard, members of the police, members of the Farmer's

Union, and all anti-Soviet organizations, political parties, student fraternities, officials of government departments, prison guards, manufacturers, traders, merchants, stockholders, shipowners, real-estate owners, and owners of other business enterprises, relatives and families of these above groups, members of the Latvian Parliament, members of municipality councils, pubilic prosecutors, judges, lawyers, members of the Latvian National Army, members of the Latvian National Guard, persons whose relatives spread anti-Soviet propaganda abroad, etc. The list is drawn in such a manner that practically 90 percent of the entire Latvian population are declared as "counterrevolutionaries" subject to "liquidation."

EVIDENCE OF RED BRUTALITIES

The Bolsheviks, retreating from Latvia in a hurry in July 1941, left ample evidence of their horrible deeds in mass graves. Exhumations in the vicinity of Riga produced thousands of corpses of victims of Soviet executions, many of which it was possible to identify. This evidence is available in descriptions, photo pictures, and films. Testimonies of numerous witnesses of Soviet atrocities, arrests, and executions in all phases have been recorded.

LATVIAN POPULATION LOSSES

The losses sustained by the Latvian Nation during the year of the first occupation of Latvia amounts to approximately 12,000 killed, 14,000 injured in some way or other, and 45,000 arrested and deported to prison labor camps, making a total of 71,000 victims of recorded Soviet outrages. At least 25 percent of the victims were children of tender age. The total population of Latvia amounted at that time to 1,900,000 souls.

SECOND SOVIET OCCUPATION

The second Soviet occupation of Latvia started in 1944, when the German armed forces gradually retreated westward through Latvian territory. It was completed on May 8, 1945, the day of the capitulation of Germany. Since then an iron curtain has been lowered by the Soviets over Latvia, and no information of what is going on behind it is permitted to reach the west, with the exception of Soviet propaganda lies.

UNDERGROUND

However, reports of the Latvian underground and letters smuggled out in various ways from behind the iron curtain sufficiently reveal the picture of the bitter life in Latvia and the gradual annihilation of the Latvian Nation by the methods of Soviet terror and their premeditated policy of genocide.

WAVES OF ARRESTS AND DEPORTATIONS

Sporadic waves of mass arrests and deportations started immediately after the Soviet reoccupation of Latvia in spring of 1945. It is impossible to depict in this brief report the available evidence of the outrages, rapes, and murders, perpetrated by the red soldiery and Soviet secret police after the reoccupation of Latvia. The most fateful period of sufferings for the Latvian Nation, however, started in 1949 with the inauguration of the enforced collectivization, which by now has been all but completed. This provided the Soviet authorities an occasion for stepping up its policy of genocide in all earnest, in order to get rid, once and forever, of the class of the Latvian small-holders, that before the war had constituted more than a half of the total population.

Hundreds of thousands of Latvian farmers and their families have been uprooted from their homes and country in an endless string of deportations to prison labor camps during the year 1949. At the same time many Russians and Asiatics have been imported and settled in Latvian communities.

While the arrests and deportations to distant prison camps during the first Soviet occupation and the first period of the second occupation were aimed at the breaking of the national spirit of the nation through annihilation of the upper and middle economic strata and the Latvian professional groups, compulsory collectivization during the year 1949 was not only devised as a measure of introducing the Soviet pattern of collective farming, but also and above all, an attempt of putting an end to Latvia as a country and nation. If this be permitted by the free world to go on much longer, the crime of genocide will succeed in Latvia.

ONE-THIRD OF THE LATVIAN NATION NOW UPROOTED

According to the best information available, a total of 600,000 to 700,000 Latvians, or one third of the nation, has been up to now, uprooted and disposed of by imprisonment in distant prisons and camps, killings, and other ways of annihilation, caused by Soviet aggression and its policy of genocide since the start of the first Soviet occupation of Latvia in June 1940.

Genocide is being perpetrated in Latvia, in the other Baltic countries of Estonia and Lithuania and in other countries.

Although the Genocide Convention may have only limited application and effect, it is a most necessary step in the right direction and we respectfully urge the ratification of this convention by the United States.

UNITED LATVIAN AMERICAN COMMITTEE,
RICHARD HERMASON, *Acting President.*

SULLIVAN & CROMWELL,
New York 5, January 20, 1950.

Hon. BRIEN MCMAHON,
United States Senate Office Building,
Washington, D. C.

DEAR SENATOR MCMAHON: As another engagement here in New York prevents me from being present in Washington when your subcommittee has its hearing on the Genocide Convention on January 23 next, I wish to write you to put on record that I am entirely in favor of the ratification of the convention and I am further convinced that it is within the constitutional powers of the United States to do so.

Faithfully yours,

A. W. DULLES.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF THE
UNITED STATES OF AMERICA NATIONAL BOARD,
New York, N. Y., January 24, 1950.

Senator BRIEN MCMAHON,
Chairman, Subcommittee on Genocide,
Foreign Relation Committee, Senate Office Building,
Washington, D. C.

DEAR SIR: The national convention of the Young Women's Christian Association of the United States of America, meeting in March 1949, supported the following section as a part of the public affairs program:

Carrying out the principles of the Universal Declaration of Human Rights; ratification of the convention outlawing genocide; and ratification of other treaties and covenants safeguarding human rights when they are completed.

In urging approval by the United States Senate of the Convention on the Prevention and Punishment of the Crime of Genocide, we hardly feel it necessary to explain in detail our opposition to the crime of genocide. Our country has frequently taken a stand against acts which were essentially genocidal in character, and we are now helping to pay for a war which had its origins in part in the persecution of a group of people.

The national board of the Young Women's Christian Association believes that the convention is a sound step in the international attack on the crime of genocide, and we urge prompt favorable action by your subcommittee, by the Foreign Relations Committee and by the Senate itself.

We should appreciate the incorporation of this statement in the record of the hearings.

Very truly yours,

(Signed) CONSTANCE M. ANDERSON,
(Typed) Mrs. Arthur Forrest Anderson,
President.

THE FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA, INC.,
DEPARTMENT OF INTERNATIONAL JUSTICE AND GOODWILL,
New York 10, N. Y., January 25, 1950.

Mr. C. C. O'DAY,
Clerk, Senate Foreign Relations Committee,
Senate Office Building, Washington, D. C.

MY DEAR MR. O'DAY: You will recall that at the hearings on the Genocide Convention held on January 23, Dr. Samuel McCrea Cavert appeared and made a statement on behalf of the Federal Council of the Churches of Christ in America. In this statement there was included supporting testimony by a number of Christian leaders throughout the country. Since Dr. Cavert's appearance before the committee there has come to our hand additional testimony which we would like to have put into the printed record of the committee hearings. I am enclosing herewith a copy of this additional testimony.

Respectfully yours,

WALTER W. VAN KIRK, *Secretary.*

STATEMENT OF DR. CLIFFORD E. BARBOUR, MODERATOR OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA

I urge the Senate to ratify the Genocide Convention. A nation that has been guided by the principles of Christ, and under that guidance has become the most successful melting pot for all peoples that the world has ever known, has an obligation to see that all people of every race have a chance not only for survival but a decent chance to progress toward a successful life.

STATEMENT OF THE RIGHT REVEREND HENRY W. HOBSON, BISHOP OF THE DIOCESE OF SOUTHERN OHIO OF THE PROTESTANT EPISCOPAL CHURCH

It is of the utmost importance in all of our efforts to establish a world in which brotherhood and peace will be ultimately achieved to establish those principles of international law which will support the highest moral and ethical standards of human relationships. While all of our goals cannot be achieved immediately, every step we take toward the ultimate goal of a peaceful world is a step in the right direction. The Genocide Convention, as adopted by the United Nations, is certainly one step which can be taken which will not only be a strong deterrent against one of the greatest horrors of past wars, but also a clear indication to people everywhere of the higher moral standard which must govern man's relationship with his fellow man. Prompt ratification of this convention by the United States Senate will give strong support to those principles which should govern human relationships in our day.

STATEMENT OF MR. ERROL T. ELLIOTT, RICHMOND, IND., EXECUTIVE SECRETARY, THE FIVE YEARS MEETING OF FRIENDS IN AMERICA

The Genocide Convention represents a major advance in human decency. It is one more opportunity to rest international behavior upon moral principles.

LATVIAN RELIEF, INC.,
New York, N. Y., January 23, 1950.

The Honorable BRIEN MCMAHON,
Chairman, Genocide Convention Subcommittee,
United States Senate, Washington, D. C.

SIR: On behalf of Latvian Relief, Inc., I respectfully wish to express our support in favor of the ratification of the Genocide Convention as a humanitarian measure.

It is our opinion that this convention is a most timely and necessary expression of elementary moral principles, which by the instrument of this convention are being cast in the form of treaty norms and international law.

Therefore, we respectfully urge the ratification of the Genocide Convention.

Sincerely yours,

HARRY W. LIELNORS, *President.*

(NOTE.—Since the closing of the hearings the following additional testimony has been presented, and is included here so that all who wished to be heard prior to the date of printing the record will have had a chance to present their views and facts for the use of the Senate:)

STATEMENT OF REV. VINCENT J. O'CONNELL, S. M., CHAIRMAN, THE CATHOLIC COMMITTEE OF THE SOUTH, NEW ORLEANS, LA., ON THE GENOCIDE CONVENTION

Mr. Chairman and members of the committee, we request favorable action on the Genocide Convention by the United States for the following reasons:

(1) We are interested in a policy by which this Nation shall continue to promote by every possible means the legal philosophy which constitutes the foundation for the Nuremberg and Tokyo trials, i. e., a philosophy which takes cognizance of an existing international common law of crimes, and assumes the willingness of compromise between nations for the effective administration of this international criminal law by an international tribunal.

(2) We agree with the preamble of the convention that the time has now come for international society to endeavor to liberate mankind from the odious scourge of genocide.

(3) According to article I, we are being called upon as a member of the United Nations, merely, to confirm the fact that genocide is already a crime according to international law, and that it should be punished with adequate sanctions.

(4) Marking a group of people for destruction when they have committed no act which deserves punishment is unjust according to the standards of the higher law accepted by civilized peoples since the dawn of history. It is an act which does irreparable harm, not only to its victims, but also, to the perpetrators and to the family of nations.

(5) We know of no law-enforcement programs at the state level which conflict with the proscriptions of the treaty. Should such a conflict arise, it would be resolved only in the courts of the United States, and only at the suit of someone affected on the state level while the local enforcement program is pending.

(6) The Congress of the United States and legislatures in other countries may devise penal legislation to implement the proscriptions of the treaty. Until this is done no criminal prosecution for genocide may be effected in the courts of any country.

(7) We see no reason to fear foreign interference with our sovereignty resulting from the convention. Sad to say, the only sanctions within the agencies of the United Nations to which any signatory to the treaty is liable is that of having to explain or justify the experience of its agencies in controlling alleged instances of genocide. These procedures will be effective on the public-opinion level only.

(8) Finally, if ever there is the occasion for the establishing of another tribunal like the one at Nuremberg, certain individuals may be charged with responsibility, and the proceedings, convictions, and punishments may be justified as within the treaty. Thus will the criticism be met that the occasion is ex post facto.

For the above reasons we feel that it is the duty of our country to put its moral and legal weight back of an already existing international criminal law through the unanimous endorsement of the Genocide Convention by the Senate of the United States.

DEPARTMENT OF STATE,
THE UNITED STATES NATIONAL COMMISSION FOR UNESCO,
Washington 25, D. C., February 13, 1950.

The Honorable BRIEN MCMAHON,
United States Senator.

Mr. DEAR SENATOR MCMAHON: In connection with your consideration of the Convention on the Prevention and Punishment of the Crime of Genocide, you may wish to put on record the fact that the United States National Commission for UNESCO adopted the following resolution during its seventh meeting on September 10, 1949, at Washington, D. C.:

"The United States National Commission for UNESCO urges that the United States Senate approve ratification of the Convention of the Prevention and Punishment of the Crime of Genocide. The Commission would not oppose reservations of the type proposed by the international law section of the American Bar Association."

I trust that this information will be of use to you in your study of the Genocide Convention and public opinion concerning it.

Sincerely yours,

GEORGE D. STODDARD, *Chairman.*

(The Armenian National Council requested permission to file a statement after the close of the hearings. That statement is as follows:)

STATEMENT OF THE ARMENIAN NATIONAL COUNCIL OF AMERICA, IN FAVOR OF THE RATIFICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF GENOCIDE, SUBMITTED BY REV. CHARLES A. VERTANES, EXECUTIVE DIRECTOR

Honorable Gentlemen, the Armenian National Council of America urges the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide.

The Armenian National Council was organized in March 1944 under the auspicious circumstances of the later stages of World War II. Among these the most hopeful were the reassuring declarations of leading allied statesmen concerning the rights of oppressed peoples and the future of smaller nations.

The council consists of 25 organizations which are national in scope among Americans of Armenian origin. As such it represents—through direct representation in the case of these organizations, and tacit approval of its aims in the case of others—the overwhelming majority of Americans of Armenian background.

The council seeks the interests of the Armenian people who have survived the Turkish massacres, deportations, and other measures directed at their destruction as an ethnic, religious, and cultural group. These people have been living as refugees for 30 or more years in the Near East, the Balkans, western Europe, in India, the Far East, the Americas, and in Soviet Armenia, and the Soviet Union.

The council hopes to realize its objectives through the implementation of the ideals of justice, freedom, security, and the right of self-determination of peoples. It pursues these ends through the action of national and international organs of peace.

The council is therefore interested in the creation, development, and strengthening of national and international organs projected for the settlement of social and political problems through legal and judicial means.

Americans of Armenian background feel they have a special responsibility to speak on the ratification of the Genocide Convention. Aremenians were the first victims of the practice of genocide in modern times. In addition, their losses within less than 30 years (1894 to 1922) totaled 2,000,000 in lives, billions in property, and the annihilation of a culture in the Armenian provinces in Turkey which went back to several thousands years.

When one considers that out of an Armenian population of more than two and a half million in 1882 in Turkey and Turkish Armenia there are left today only 80,000; that out of a territory of 136,289 square miles constituting the Armenian homeland only 11,580 is included in the Armenian Soviet Republic, while the rest remains in Turkey, mostly depopulated and in a state of ruin; and that Armenian culture has been one of the most fruitful in history that survived to our age; one realizes the appalling magnitude and depth of the Armenian tragedy.

There are many Armenians in the United States today as in other countries where they have found refuge, who have not a single surviving relative in the whole world—no parents, no brothers or sisters, no uncles, or cousins, or nephews, or nieces—not even on the secondary or more distant levels. They are completely devoid of any family ties, save what relations they have been able to establish with in-laws through the marriage. As such, their experience represents only one of many aspects of the emptiness which has entered the life of Armenians who have survived the massacres of World War I.

The Turkish massacres, deportations, and other types of persecutions, such as the imposition of the arbitrary tax on wealth, known as Varlik Vergisi, which was devised during World War II in order to destroy not only the Armenian but also the Greek and Jewish minorities in Turkey, constitute a clear-cut case of genocide, a planned move to destroy religious and ethnic groups. The Turks tried to represent these deeds, though futilely, as action against enemies in war or rebels against the government. The elimination of the Armenians was re-

solved on as a step toward realizing a pan-Turanian empire across central Asia. The Turks, who represent themselves as a kind of Asiatic Herrenvolk, set out deliberately to wipe out as a "lesser breed without the law" their non-Turkish subjects, who were incontestably their superiors morally, socially, and culturally.

The Turks are clearly guilty of four out of the five acts enumerated by the convention, the commission of which is defined as constituting genocide. These acts are, first, killing members of the group; second, causing them serious bodily or mental harm; third, deliberately inflicting conditions of life calculated to bring about their physical destruction; fourth, taking measure to prevent births within the group; and fifth, forcibly transferring children of the group to another group. It was only the fourth of these acts which the Turks did not engage in, in the sense in which the Nazis did, but this was due to their lack of adequate scientific knowledge. They are, however, guilty even of this crime in a general way, since by impressing Aremnian women into Turkish homes and harems they prevented them from bearing Armenian children. The unqualified destruction of the men and the frequent sparing of young girls and women of child-bearing age are under such circumstances cannot be interpreted otherwise.

With such a background as this Americans of Armenian origin are impelled by blood and conscience, and all that America has taught them in regard to justice, democracy, decency, and human rights to urge the ratification of the Convention on the Prevention and Punishment of Genocide.

The argument that the convention is not an effective instrument for the prevention and punishment of genocide is not true. This question was raised even during the debate before the Sixth (Legal) Committee working for the convention. The crime, it was there pointed out, is usually committed by a state and, therefore, it permitted no punishment short of war. This is not quite the case, however. While it may be true that a state cannot be punished except by war, actually it is individual rulers who are responsible for the crime. And men do not remain rulers forever. It is as individuals that they are guilty, and it is the convention which would become their nemesis in the event of a change of government, or in the event that they left their country. The fact that charges could be preferred would act as a strong deterrent.

An incontrovertible evidence of this is what Hitler did and said in 1939, just before the invasion of Poland, when he sent to the East his Death's Head units, with the order to "kill without pity or mercy, old men, women, and children of the Polish race and language," because, he explained, "only in such a way will we win the vital space we need." He felt sure at the time he would not be called personally accountable for this heinous order, for he argued, "who still talks nowadays of the extermination of the Americans?" When informed of the threat of the Allies concerning the personal responsibility of public criminals, he put the question cynically, "What Allies? The same that threatened against the Turks?"

Hitler was right. The Turks who had plotted the Armenian genocide were not personally called to account for their monstrous deeds, a failure for which the world paid very dearly.

On June 23, 1915, the Allies, in the most terrible days of the deportations and massacres in Turkey and Armenia, declared to the world that they would hold personally responsible and punish as common criminals the authors of these atrocities. The covenant of the League of Nations later reaffirmed the principles of human rights, freedom, and justice, on which such punishment was predicated. And so during the first days of the armistice the Allies arrested the authors of this hitherto unparalleled crime of modern times. Eighty-two of the chief accomplices of the Ittihad Party were exiled to the island of Malta.

There was a lack of sincerity in the whole procedure from the very beginning evident to the keen observer, however. When therefore the United States turned down the proposal for a mandate over Armenia, the occasion was used as a ruse to hide the ambitions and intrigues of the Allies among themselves in their effort to be the chief beneficiaries of the spoils of the war, and the criminals were freed without trial and punishment so that they could go back and organize a new Turkey out of the ruins of the war.

It is not surprising that the Turks themselves were astonished at this manifestation of a cynicism more brazen than any of which they had been accused. They were quick, however, to exploit to the hilt this moral faux pas of the Allies. In fact they were very much helped in this by the Allies themselves, as each vied with the other to curry the favor of the prostrate foe.

The unpunished criminals set at large and those who scurried out of hiding, as well as other less conspicuous offenders, did not lose time in getting together

and reviving the old spirit under new names. Many of the old institutions were streamlined to correspond to the political forms of the West. Under the "protective" guns of British battleships anchored in Constantinople they adopted the national covenant by which they relinquished or acquiesced to the loss of Syria, Palestine, and Mesopotamia to the British and French, their "liberators," but vowed to regain and remain in possession by force of arms the remaining territories, which meant nothing else but the major portion of Armenia and all of Greek Anatolia, and Kurdistan.

Among the criminals who played an important part in the subsequent postwar betrayal of Armenia was Ismet Pasha, now known as Ismet Inönü, since 1938 the President of the "new" Turkey. Ismet Bey, as he was earlier called, was a member of the ruling Ittihad Party, and as captain of the official staff of the second division of the Turkish Army had taken part in the Congress of Edirné of 1914, which made the fateful decision concerning the extermination of the Armenian people. It was later as Ismet Pasha that he scuttled the Armenian question at the Lausanne Conference in the early twenties; and still later as Ismet Inönü that he had the remains of Talaat Pasha, Turkish premier in World War I and one of the two men most responsible for the Armenian massacres, brought back to Turkey from Germany in state. Talaat, who had been officially recognized by a German court at the end of World War I, at the trial of his assassin who was set free without free without prejudice, was formally declared a hero of the "new" Turkey by this President of the Turkish Republic.

Others who took part in the Congress of Edirné were Teoof Bey and Fethi Bey, both of whom served as prime ministers under the new Kemalist regime: Yousuf Kemal Bey, Bekir Sami Bey, and Tushdi Aras Bey, all of whom served as ministers for foreign affairs under Kemal; and men like Saracoglu and Menemencioglu, whose terroristic activities against the Armenians have been characterized as surpassing anything to be found in the annals of Jenghiz Khan and the invading Mongols.

It was under these men led by Mustafa Kemal, between the Armistice of Mudros, October 30, 1918, and the Treaty of Lausanne, July 23, 1923, another 100,000 Armenians were slain in the Caucasus, western Anatolia, Syria, and Cilicia.

These men also tried to dispose of the large minority of Greeks in Anatolia through massacre, deportation, and population exchange. Several years later the deadly wrath of these men was poured on the Kurds, their co-religionists, at which time, according to some authorities, as many as 1,000,000 perished. This number may include the destruction of the Christian Assyrians and of other smaller minority groups in eastern Anatolia. Meanwhile the Turkish policy of genocide has continued to date in the form of what may be referred to as a white massacre, an enforced assimilation of all the remaining minorities in Turkey. The result is that Turkey today, according to a public declaration of one of its officials, has the smallest "minorities" population in all of Europe.

Obviously the Turkish crime of genocide against the Armenians inflicted a serious blow to world civilization, economically, politically, culturally, and spiritually, because of the unsteady conscience and irresolute will of men and nations during the years which followed the First World War, who vacillated endlessly between the desire to implement law and order in international relations, on the one hand, and the urge to pursue imperialist interests through power politics, on the other hand.

Should history be allowed to repeat itself by a second less justifiable failure to punish the criminals of past genocides and to establish the necessary instruments that may prevent the commission of the same crime against other peoples in the future? The ratification of the convention by the United States will go far in strengthening the forces which are attempting to deal with this problem effectively.

III

The holocaust of the Second World War once more awakened the conscience of organized society and set the stage for the further development of an international legal and judicial morality. All who took part in the struggle against the Axis promised that war criminals who violated generally accepted international law and committed crimes against civilian populations would meet stern punishment.

As early as 1943 the heads of the Governments of the United States, the Soviet Union, and Great Britain proclaimed in their declaration that those guilty of such crimes would be hunted to the ends of the earth and brought to justice.

When the United Nations was first organized at San Francisco in 1945, it incorporated in its Charter the provisions making respect for personality and protection of human rights, irrespective of race, language, religion, or sex, a special province of the new organization, and provided for the creation of the Commission on Human Rights.

On October 1, 1946, with the sentences handed down in Nuremberg the international community took action for the first time in history to punish men who had committed "crimes against humanity," thus recognizing that such crimes were of international concern.

The United States also recognized the event as of epochal significance, when its official representative, Mr. Justice Jackson declared that the Nuremberg trials found this country and her allies "at one of those rare moments when the thought and institutions and habits of the world have been shaken by the impact of world war on the habits of countless millions. Such occasions rarely come, and quickly pass. We are put under a heavy responsibility to see that our behavior during this unsettled period will direct the world's thought toward a firmer enforcement of the laws of international conduct, so as to make war less attractive to those who have governments and the destinies of the peoples in their power."

Shortly after the Nuremberg sentences the United Nations took a distinct official step with respect to genocide. On December 11, 1946, the General Assembly adopted a resolution declaring that the "denial of the right of existence of the entire human groups shocks the conscience of mankind * * * and is contrary to moral law and the spirit and aims of the United Nations"; and that the "punishment of the crime of genocide is a matter of international concern." "Genocide," it held, "is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices—whether private individuals, public officials, or statesmen, and whether the crime is committed on religious, racial, political, or any other grounds—are punishable." The resolution further recommended international cooperation to facilitate the prevention of genocide and punishments for its perpetrators, assigning to the Economic and Social Council the task of drawing up a draft agreement on the subject.

The terms of this resolution were embodied in the Convention on the Prevention and Punishment of Genocide which, as Your Honors know, was passed by the General Assembly on December 9, 1948, by a vote of 55 to 0 with no abstentions. As such the Genocide Convention represents the consensus of the international community.

The Convention on Genocide is one of the first efforts of the international community to develop principles set forth during the Nuremberg proceedings as a permanent part of the law of nations; with this difference that whereas the decisions made at the Nuremberg trials refer only to wartime acts, the convention extends genocide as a crime in peacetime, and thus places on a more universal foundation the international structures against mass murder against national, ethnic, and religious groups.

Such being the case, the ratification of the convention would enhance the moral leadership of the United States in international relations. It has already been so argued before this subcommittee on January 23 of this year by Deputy Undersecretary of State Rusk, who argued on behalf of the State Department the ratification already endorsed by President Truman: "The Senate of the United States," he said, "by giving its advice and consent to the ratification of the convention, will demonstrate to the rest of the world that the United States is determined to maintain its moral leadership in international affairs and to participate in the development of international law on the basis of human justice."

IV

We have already discussed the question of the effectiveness of the convention from the negative standpoint of the serious consequences in the absence of such an international instrument. Since one of the major attacks on the convention has been the argument that it is not an effective instrument for the prevention and punishment of genocide, may we direct your attention to those specific measures in it which discredit that argument.

The convention as it stands today wil be a deterrent to would-be criminals of genocide, since it attempts to provide for the punishment of those who would violate this most basic of human rights; namely, the right of peoples to live.

The convention makes it clear that persons committing any of the acts which go under the official definition of "genocide" will be punished "whether they are constitutionally responsible rulers, public officials, or private individuals," and that they will be tried by some competent tribunal of the territory in which the act was committed, or alternatively by an international penal tribunal. By specifying that genocide is an extraditable offense, the convention guarantees that no criminal committing genocide will be able to obtain asylum in any country of the signatories.

Henceforth it will not be possible for people guilty of the crime of genocide to be at large without the apprehension that the organized will and judicial machinery of international society has condemned them as public criminals subject to punishment in due time.

The convention binds the contracting states to pass the necessary legislation to give effect to its provisions, especially to provide effective penalties. It obligates these states to try persons charged with offenses in their compentent national court. Furthermore the states agree that the acts listed shall not be considered political crimes, and pledge to grant extradition in accordance with their laws and treaties.

In addition to such national action, the convention also envisages trial by an international penal tribunal should one be set up and should the contracting parties accept its jurisdiction. Furthermore it provides that any of the contracting parties may bring a charge of genocide, or of the other acts, before the competent organs of the United Nations and ask for appropriate action according to the Charter.

If there is any dispute between one country and another on the interpretation, application, or fulfillment of the convention the dispute must be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Many UN delegations have been ready and eager to implement those provisions of the convention that relate to international jurisdiction at an early date. Wahid Fikry Raafat of Egypt, in his comments on the occasion of the passage of the convention, referred to this clearly when he said: "We continue to feel with a number of other delegations that, in order that punishment of genocide may be effected, it is necessary for the most dangerous culprit to be convinced beforehand that, even if he could escape the judgment of a national court, he cannot escape the judgment of an international tribunal which will be impartial."

While the convention will be binding only upon those states which have accepted it, nevertheless by establishing an international standard and by recognizing the principle of international responsibility, its jurisdiction may ultimately extend beyond that of the nations which ratified it.

The ratification of the convention by all governments and the eventual development of an international judiciary to deal effectively with the practice of genocide will also remove the possibility of the political exploitation of this crime by individual states or a special grouping of states to serve their nationalistic or imperialistic interests, at the expense of the ultimate break-down of international law and the peace of the world.

Dr. Herbert V. Evatt, the president of the UN General Assembly at which the convention outlawing genocide was adopted, told the Assembly that while endeavors occasionally had been made in past centuries "to preserve human groups from destruction through so-called humanitarian interventions undertaken by one nation acting usually alone," these took the form of diplomatic action, which frequently opened the governments who undertook the interventions to charges "of pursuing other than humanitarian aims." Today," he added, "we are establishing international collective safeguards for the very existence of such human groups. Whoever will act in the name of the United Nations will do it on behalf of universal conscience as embodied in this great organization. The intervention of the United Nations and other organs which will have to supervise application of the Genocide Convention will be made according to international law and not according to unilateral political considerations. In this field, which relates to the sacred right of existence of human groups, we are proclaiming today the supremacy of international law once, and I hope forever."

V

Another serious opposition to the ratification of the convention by the United States has risen from lawyers who are fearful that the treaty would invade the rights of individual States of the United States and may open the way to international jurisdiction over the United States. We maintain that contrary to this apprehension the interests of the United States both at home and abroad will not be jeopardized but actually enhanced.

It seems hard to believe [1] that any document with such highly laudable purposes should encounter any opposition in a country like the United States, where there have never been any incidents of genocide (excepting perhaps in the cases of the American Indian and of some of the worst abuses of the slaves before the Civil War). The misgivings have come from no less a body than the American Bar Association. Oddly enough, members of the Bar Association seem in their objections to have very little confidence in the judicial and political system of which they are such important mainstays. They insist that the imperfections they find in the treaty can be dealt with only by revisions or senatorial reservations (which would, in the eyes of the world, weaken the United States' position regarding genocide), and seem unable to recognize that the difficulties they foresee can be resolved (if, indeed, they ever arise) equally well by the Congress and courts of the United States.

The association, for instance, would insist on a reservation making it specific that "killing members of a group" applied to the killing of thousands of people and not just a few. Here the association would appear to be more guilty than the United Nations of the poor draftsmanship they imply exists, because obviously more important than the numbers involved in genocide is the "intent to destroy." It is perfectly possible that 997 persons might be victims of the crime, and it seems unduly cruel to bar them the protection of the law because 3 few were killed. The lawyers wish to assure themselves, of course, that the execution by due process of law of a few people would not be termed genocide just because they were incidentally all members of one group, but certainly this involves a question of fact which any court is qualified to determine.

Similarly there was objection to the use of the phrase "mental harm" in article II because it might open the way to unnecessary litigation based on evidence of psychological injuries rather than mental harm arising from the use of narcotic drugs. Here again, it seems difficult to understand why the courts are not competent to interpret this article. It is, in fact, clear from the context of the debates on the phraseology, that it is to the use of narcotic drugs (as they were employed, for instance, by the Japanese in China) that these words pertain. In interpreting this article, any court would seek out the intent of the United Nations, just as the Supreme Court, in interpreting American law, seeks out the intent of Congress.

The association felt that prohibitions against direct and public incitement to commit genocide would be without force in the United States. On the contrary, if the United States ratified the treaty, it would become the supreme law of the land according to our Constitution and, as such, these prohibitions would apply here. What is more, it seems clear that this clause would be interpreted like other limitations upon freedom of speech, for instance by the "clear and present danger" test set forth in *Schenk* v. *United States*. The association also asked for a definition of "complicity" in genocide, a task which might equally well be left to future judicial determination.

More serious than these legal quibbles was a request by the association that the Senate specifically state that the operative articles of the covenant are not self-executing in the United States, because their entrance into force would depend upon action in the field of civil rights by the individual American States. If this were a thoroughly established constitutional principle in this country, it would seem unnecessary to state it in a reservation, but actually, the United States can make treaties in areas usually thought to be within the province of the States if the subject matter of the treaty has attained sufficiently an international aspect. The Bar Association's request would seem, therefore, to be directed at securing a political judgment in this case which would negate the effect of the convention. Southern Senators might well insist on such a reservation on general principles, inasmuch as they are reluctant for obvious reasons to see further inroads made by the Federal Government in the civil-rights domain. That like motivations are behind the association's recommendation seems obvious from other "objections" to the convention raised in the course of discussion—objections that the convention would end by removing from the States all jurisdiction over civil rights; that each death in a race riot would become an international crime; and that the United States might find itself having to protect minorities everywhere if it ratified this convention.

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[1] This and the following paragraphs in this section are taken from a study of Dr. Richard N. Swift, instructor in government and assistant to the director of the graduate program of studies in the United Nations and world affairs at New York University. Dr. Swift is also liaison officer of New York University to the UN. The study appeared in The Standard, organ of the American Ethical Union, February 1950, pp. 208–215, and is entitled "The International Murder Case."

Actually, all of these statements are either untrue or irrelevant. The relation between the States and the Federal Government in the field of civil rights has been constantly changing, and it will be up to the Supreme Court when specific cases arising under the covenant are brought before it, to decide what effect the convention will have. No death in a race riot would be an international crime (although perhaps it should be) unless it was part of a deliberate attempt to destroy the race. Furthermore, the United States will find its relations to foreign minorities unaffected by this treaty. If the treatment of minorities becomes a matter of concern to the General Assembly, it becomes automatically a matter of concern to the United States in any case, whether we have ratified the treaty or not, and in fact, we have already concerned ourselves with the treatment of minorities in certain Balkan countries.

Because of the objections it raised, the Bar Association urges the United States not to ratify the convention until the constitutional questions involved have been resolved. No one except the Supreme Court can resolve these questions, however, and the Court cannot act until cases are brought before it under the convention. No ratification, therefore no cases, so waiting to ratify until the constitutional questions are resolved is equivalent to waiting an indeterminate length of time for an impossible event. Actually, it is more sound to ratify and leave it to the courts and Congress to harmonize the meaning of the treaty with our domestic laws, if, as, and when any cases do arise.

Beneath the surface of the objections raised against the convention seem to be fears that the agencies of international organization might some day hand down a decision which certain portions of opinion in the United States would oppose. As a matter of fact, in the case of this convention that is most unlikely. Many of the hypothetical cases cited by the treaty's opponents are false issues or are based on misconceptions of the international law involved, and there is no likelihood that the United States will ever find itself embarrassed because of having ratified.

The critics of the convention, however, are either unaware of or indifferent toward an important ethical issue involved in their position. This is the question of the kind of morality involved in the implicit assumption that in specific cases the international community must constantly agree with American conceptions of what is just. Nowhere is there an admission that the United States might ever be mistaken; nowhere any indication of a willingness to submit to any judicial procedures where we are not in complete command; nowhere, certainly (and unfortunately), any glimmer of a realization that if we are ever to have world peace, we should without a doubt be prepared to submit to international legal procedures established and agreed to in advance without knowing what the outcome in specific instances will be; and nowhere any idea that we should be willing to change our laws, if necessary, to harmonize with the will of the international community.

To accept such a point of view may perhaps require more ethical growth in the United States, but this development is certainly not a prerequisite for ratification of the Convention on Genocide. It should be enough to realize that ratification would put the United States squarely on the side of those nations interested in increasing the stature of international law in the community of nations by making it apply to crimes that are truly international and to individuals and governments (who can be tried) and not merely to nation states (which are impersonal legal fictions). As democratic leaders in the world, we have the greatest responsibility to ratify the convention. It was the United States which at Nuremberg placed itself wholly in favor of the development of international law by these methods, and it behooves us now, both in our own interest, and in the interest of the community of nations, not to reverse ourselves.

Reservations can only complicate the understanding of other nations with regard to our position on this issue and the international legal situation with regard to genocide. Since our normal constitutional procedures are adequate to deal with the questions raised by the opponents of the convention, it seems sheer folly to equivocate about our firm opposition to organized mass murder.

VI

The ratification of the covenant by the United States and other countries would strengthen the forces which make for law and order in human relations, both on the intranational and international levels. As Mr. M. K. V. K. Sundaram of India has pointed out: "A convention of this character would be an effective instrument only to the extent that there is real and wholehearted support from a

large number of sovereign states. It would be an easy task to draw up an ideal convention on paper, completely acceptable from one point of view, but such a convention would be worthless if it did not commend itself to many states."

The question of whether or not to ratify the convention is not one of making just a decision on another treaty, but one of committment on the more vital question whether man is willing and capable to develop international law by legislative techniques. A positive "yes" will strengthen the United States and the cause of international government in the years ahead, for methods used in developing international law in relation to genocide later undoubtedly will be applied to other fields. A negative answer will leave no alternative but further submission to the vicious cycle of destructive wars. It will add to those subversive forces in the world which would stifle the enlightened moral conscience of humanity.

Armenians, one of the peoples hardest hit from the failure to fulfill the principles of human rights, justice, and freedom, enunciated by the Allied diplomats during the First World War, know what it will mean to the world if more drastic action is not taken in the present postwar era than was the case in the twenties and thirties to check the murderous inclinations of those who may launch genocide against other peoples in the future.

It is the earnest desire of the Armenian National Council of America that the United States, with its traditional regard for law and human rights, should promptly ratify the Convention on the Prevention and Punishment of Genocide.

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